

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1090 OF 2021
IN
CRIMINAL APPEAL NO. 767 OF 2018**

Nitin Hari Jagdale	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Manoj Mohite, Senior Advocate i/by Abhay A. Jadhavar, Sandeep Magar for the Applicant.

Mr. Manish Devkar for the Respondent No.2.

Mr. A. R. Kapadnis, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 1st MARCH, 2023

P.C. :-

. The applicant/accused no.5 came to be convicted in Sessions Case No. 2 of 2016 for an offence punishable under Section 302 and is awarded life imprisonment.

2. The submissions of Mr. Manoj Mohite, learned senior counsel appearing for the applicant/accused no.5 is the conviction is based on sole testimony of PW6. Though, PW6 claim to have narrated entire incident PW7 on phone immediately after the incident and PW7 accordingly called the Police, the Investigating Officer has not recorded the said statement of PW7 as the first information. He would further urge that though PW5 has disclosed about the incident and the

involvement of accused persons to PW3, PW5 and PW7. The fact remains that the naming of the accused in the commission of the offence at variance in spite of the aforesaid fact and as such, he would urge that the conviction of the applicant cannot be sustained on the sole testimony of PW6.

3. The learned APP assisted by the counsel for the complainant would support the order of conviction.

4. We have appreciated the submissions.

5. Apart from the fact that the testimony of PW6 reposes the confidence in the prosecution theory, the provisions of Section 34 are invoked. PW6 has specifically named the applicant in the FIR with the active participation in the commission of offence by use of sword. The applicant/accused no.5 was apprehended after one month of the commission of the offence and as such, the question of recovery of blood stained clothes or the weapon used in the commission of crime, in our opinion, will be of hardly any consequences at this stage.

6. There is sufficient evidence which pin points the involvement of the applicant in the offence in question. That being so, no case for grant of release under Section 389(1) of the Code of Criminal Procedure is made out.

7. The application as such stands rejected.

8. However, it shall open for the applicant to move a fresh, in case, if the appeal is not heard by end of 2024 or in case of any change in circumstances.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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