



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 238 OF 2020
IN
CRIMINAL APPEAL NO.212 OF 2019

Aslam @ Sandy Ikrar Ansari ...Applicant

Versus

State of Maharashtra and Another ...Respondents

Mr. Amit Icham a/w. Mr. Aniket Nikam and Mr. Aashish Satpute for the Applicant.

Ms. P. P. Shinde, APP for the State.

Mr. Lokesh Zade a/w. Mr Asif Shaikh, Appointed for Respondent no. 2

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 12th SEPTEMBER 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant vide judgment and order dated 2nd November 2018 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 790 of 2012 has been convicted alongwith other co-accused as under:

—for the offence punishable u/s. 143 of the Indian Penal code, to suffer R.I. for three months and pay fine of Rs.500/-, in default, to suffer R.I. for eight days;

—for the offence punishable u/s. 148 of the Indian Penal code, to suffer R.I. for one year and pay fine of Rs.1000/-, in default, to suffer R.I. for fifteen days;

—for the offence punishable u/s. 147 of the Indian Penal code, no separate sentence is awarded;

—for the offence punishable u/s. 326 r/w. 149 of the Indian Penal code, to suffer R.I. for five years and pay fine of Rs.5000/-, in default, to suffer R.I. for one month;

—for the offence punishable u/s. 302 r/w. 149 of the Indian Penal code, to suffer R.I. of life imprisonment and pay fine of Rs.10,000/-, in default, to suffer R.I. for three months.

All sentences were directed to run concurrently.

4. At the outset, we may note, that the applicant seeks suspension of his sentence and enlargement on bail, on the ground of parity with other co-accused i.e. Yashir Majid Shaikh (Original accused no.4), whose sentence has been suspended and who is enlarged on bail by this Court vide order dated 19th December 2019 in Application No. 24 of 2019 in Criminal Appeal No. 20 of 2019

5. Learned counsel for the applicant also submits that the applicant has been in prison for the last nine years, with no prospect of his appeal being heard in the immediate near future.

6. Perused the papers. It appears that there are four eye witnesses to the alleged incident of assault on deceased – Ismail Sharif Shaikh which took place on 29th April 2012 at about 7.30 pm to 8.00 pm.

7. As far as PW-1- Jahed Mohammad Sayyad, Original complainant and an eye witness to the alleged incident is

concerned, he has not named the applicant as being one of the assailants.

8. As far as PW-2 – Abdul Kadar, son of PW-8 (Bibi Badasha Shaikh) is concerned, he has stated that the applicant, Yashir Majid Shaikh (who has been enlarged on bail) and other accused were armed with weapons and assaulted the deceased. The role ascribed to the applicant is similar to that of Yashir Majid Shaikh who has been enlarged on bail. It is pertinent to note, that PW-2 in his statement before the Magistrate has not named the applicant as being one of the assailants.

9. As far as PW-8 –(Bibi Badasha Shaikh-mother of PW-2 and as injured eye witness) is concerned, she does not specifically name the applicant in her deposition, however identifies the applicant, as being friend of one of the accused. It is pertinent to note that she does not speak about the presence of PW-2 (Abdul Javed Badshah Shaikh) at the time of the alleged incident.

10. As far as PW-9 Akbar Ali Badha Shaikh is concerned, the role attributed by him to the applicant, is identical to that of co-

accused Yashir Majid Shaikh who has been released on bail by this Court i.e. all accused persons were armed with weapons and assaulted the deceased.

11. Admittedly, there is no recovery of any weapons at the instance of the applicant. It is not disputed by the learned counsel for the respondents that the role of the applicant is similar to that of Yashir Majid Shaikh who has been enlarged on bail. Apart from the aforesaid evidence on record, the applicant is in custody for the last nine years.

12. Considering the aforesaid, application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

- (ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- (iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

13. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.