

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

**CRIMINAL APPLICATION NO. 975 OF 2018
IN
CRIMINAL APPEAL NO. 646 OF 2018**

Somnath Namdev More ... Applicant
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Ashok M. Mundargi, Senior Advocate a/w Satyam Nimbalkar and
Abhishek Arote for the Applicant.

Mrs. M. M. Deshmukh, APP for the Respondent-State.

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

DATE : 9th FEBRUARY, 2023

P.C. :-

. In Sessions Case No. 683 of 2010, applicant/accused no.2 came to be convicted along with accused no.1, his real brother, for an offence punishable under Section 302 of the Indian Penal Code and is sentenced to undergo life imprisonment.

2. The prosecution story against the applicant is both the accused i.e. Somnath and Navnath are the real brothers, whereas the injured Gulab and Vilas are the cousins of applicant. Deceased Bhanudas was also cousin brother of applicant.

3. In view of the dispute on the issue of development of joint

family property, the differences took place on 4th June, 2010 initially in between deceased Bhanudas and the mother of applicant when she obstructed/stopped the movement of a truck carrying sand which is used in the construction of the house of deceased Bhanudas.

4. In the aforesaid background, the accused persons having noticed that deceased Bhanudas and the injured Gulab and Vilas have threatened their mother, the accused no.1-Navnath through is licenced revolver fired at deceased Bhanudas in all three bullets and also injured Gulab and Vilas by firing at them.

5. The role attributed to the applicant is that of holding hand of Vilas which has facilitated accused no.1 Navnath to fire at said victim i.e. Vilas and Gulab.

6. The learned Senior Counsel Mr. Mundargi, would urge that considering the role attributed to the applicant, the delay in recording statement under Section 161 of the Code of Criminal Procedure, looking at the role attributed to the applicant in the commission of crime, this Court at trial stage directed a release of the applicant under Section 439 of the Code of Criminal Procedure vide order dated 3rd February, 2011 passed in Criminal Application No. 107 of 2011. Application deserves relief of bail. According to Mr. Mundargi, as on today, the applicant has suffered actual imprisonment, pre and post trial of about 5 and ½ years. In the aforesaid background, his contentions are the only material to rope in the applicant is that of the statements of Gulab, Vilas, etc. He would urge that the ladies members from the

family of victim are not examined by the prosecution. As such, he would urge that there is a strong case of acquittal made out, as such, the Court needs to exercise powers under Section 389(1) of the Code of Criminal Procedure in favour of the applicant.

7. Learned APP Mrs. Deshmukh, would strenuously oppose the prayer on the ground that the statements of the victims Gulab and Vilas, even if are recorded at belated stage, however, there were justifiable reasons as these victims were undergoing treatment at the hospital. According to her, both these witnesses are not only the victims but are also eye-witnesses to the violent act of the accused persons and as such, she would urge that there is a strong evidence against the accused persons, which she is formed to be basis for awarding conviction. She would specifically rely on the role attributed to the applicant in the matter of facilitating the attack by revolver/firearm on the victims. She would as such urge that the ingredients of Section 34 can be inferred against the applicant.

8. We have appreciated the submissions.

9. The fact remains that under Section 161 statements of the victims were recorded at belated stage, in spite of the fact that the said victims were discharged from the hospital much prior in point of time. Similarly, other witnesses, the wife of deceased Bhanudas is not examined in support of the prosecution case. The fact remains that the applicant was not armed with any weapon and no aggravated overact is attributed to the applicant in the commission of the offence but for the

holding hand of victim Vilas.

10. In the aforesaid background and having regard to the fact that the applicant was on bail during the trial, a case for grant of bail under Section 389(1) of the Code of Criminal Procedure is made out. One more reason which made before this Court for granting relief is the applicant has suffered incarceration for a period of 5 and ½ years.

11. In view of above, sentence stands suspended. The Applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

12. The applicant shall remain outside the jurisdiction of the Police Station till the appeal is disposed of.

13. Application stands allowed in aforesaid terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]