

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

**INTERIM APPLICATION NO. 3131 OF 2022
IN
CRIMINAL APPEAL NO. 758 OF 2018**

Harish Baburao Patil	...	Applicant
Versus		
State of Maharashtra	...	Respondent

Dr. Yug Mohit Choudhary for the Applicant.
Mrs. G. P. Mulekar, APP for the Respondent-State.

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

DATE : 31st JANUARY, 2023

P.C. :-

. The Sessions Court, Kolhapur, in Sessions Case No. 96 of 2013, convicted all the five accused persons for an offence punishable under Section 302 read with Section 34, 120B of the Indian Penal Code.

2. The case of the prosecution against the applicant-accused no.3 is the accused nos.1 and 2 who are the real brothers, fired from firearm resulting into death of the victim when the applicant was accompanying the said accused persons.

3. The accused nos. 1 to 3 including the applicant, fled away on the vehicle, two wheeler, which was driven by the accused no.5.

4. Dr. Choudhary, counsel appearing for the applicant would urge that the conviction is based on the testimony of single eye-witness i.e. PW19. According to him, the statement of said eye-witness was recorded after a lapse of more than eight days delay and even if the testimony of said witness is appreciated, the only role which can be inferred against the applicant is that of he was physically presence on the spot of the incident. He would urge that the other co-accused i.e. accused no.5 is ordered to be released by this Court in the matter of a serious doubt as to his identity vide order dated 1st August, 2022 delivered in Interim Application No. 2324 of 2022 in the present Criminal Appeal. As such, he would urge that the applicant also deserves similar reliefs in exercise of powers under sub-Section (1) of Section 389 of the Code of Criminal Procedure.

5. Learned APP while opposing the prayer would urge that PW19 in categorical terms has stated about presence of five accused and the present applicant was duly identified in the ID parade. As such, she would urge that the provisions of Sections 120B and 34 are invoked against the applicant.

6. We have considered the submissions. With the assistance of respective counsel, we have also perused the evidence of PW19, the sole eye-witness to the incident.

7. A perusal of the order dated 1st August, 2022, whereby accused no.5-Mahadev @ Hemant Masgonda Kalgutagi was granted relief under Section 389, specific observations are made that the PW19 has

stated as to the physical deformity (deformity in eye sight) as regards the said accused whereas the Arrest Form of present applicant i.e. accused no.3 reflects that it is the present applicant who has a serious deformity in the eye sight.

8. As such, the reasons which are formed to be basis for ordering release of accused no.5 are with equal force applicable to the present applicant.

9. Apart from above, if we appreciate the testimony of PW19, an eye-witness, the role attributed to the applicant is that of fleeing away from the spot of the incident by riding a motorbike driven by accused no.5. But for the above evidence, in absence of material to infer the active participation of the applicant in the offence in question, the applicant in our opinion deserve relief.

10. In view of above, the applicant stands allowed. The applicant is directed to be released 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 his 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.

11. The application is allowed in the aforesaid terms and is accordingly disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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