



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1484 OF 2018

IN

CRIMINAL APPEAL NO. 1074 OF 2018

Mukthar @ Raj Jakir Khan ... Applicant

Versus

The State of Maharashtra and another ... Respondents

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Mr. Aniket Ujjwal Nikam alongwith Mr. Aashish Satpute, Mr. Piyush Toshniwal and Mr. Amit Icham for the Applicant.

Ms. M.M. Deshmukh, APP for the State.

Ms. Farhana Shah for Respondent No.2 (appointed).

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CORAM : NITIN W. SAMBRE &
N.R. BORKAR, JJ.

DATED : 1 NOVEMBER 2023

P.C. :-

1. In Sessions Case No.210 of 2016, the applicant/accused no.3 came to be convicted for the offence punishable under Sections 302 r/w. 34 of Indian Penal Code and sentenced to life imprisonment.

2. The role attributed to the applicant is that he had caught hold of the deceased so as to facilitate the accused no.1 to murder the deceased by use of a weapon viz. Chopper which was seized from the spot of incident.

3. Advocate Mr. Nikam appearing for the applicant has invited our attention to the fact that the applicant was arrested on 19 April 2016

and has already undergone punishment for about 8 years. According to him, the appeal is not likely to be heard in recent future. That being so, this Court must consider the prayer and grant bail to the applicant. His other submission is, Apex Court vide order dated 3 March 2023 has granted bail to Shahabaj Majid Pathan i.e. accused no.2. It is claimed that role attributed to the said accused is that of deterring the public by his violent conduct from protecting the deceased Taufiq at the time of assault being caused by the accused no.1. As such, Advocate Mr. Nikam would urge that the applicant is also entitled to claim parity as role attributed is almost similar.

4. The learned appointed Counsel for the complainant and the learned APP would oppose the prayer based on the testimony of the eye-witnesses.

5. We have considered the rival submissions.

6. The fact remains that even though the applicant/accused no.3 was arrested on 19 April 2016, he was on bail during Covid period. As such, it could not be said that the applicant has suffered punishment for 7½ years.

7. Apart from the above, testimony of eye-witnesses, particularly PW-1 specifically implicated the applicant/accused no.3 from whom the blood stained clothes were also seized.

8. There is a direct evidence of eye-witness thereby depicting the active involvement of the applicant in the offence.

9. Apart from the above, in a brutal manner the deceased was

done to death as he has suffered more than twenty stab wounds execution of which was facilitated by applicant.

10. As far as order dated 3 March 2023 passed by the Apex Court in the matter of co-accused i.e. accused no.2 – Shahabaj Majid Pathan is concerned, his role cannot be said to be at par with the present applicant.

11. Considering the overall facts and circumstances, we are not inclined to release the applicant on bail.

12. Criminal Application stands dismissed.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)