

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

***INTERIM APPLICATION NO. 952 OF 2021
IN
CRIMINAL APPEAL NO. 72 OF 2020***

Shekhar Prakash Ahire
Aged about 27 years,
Residing at Shramik Nagar,
Canal Road, Near Maruti Temple,
Jail Road, Nashik Road, District Nashik
At present undergoing the
Sentence imposed upon him at
Nashik Road Central Prison, Nashik ... Applicant

Versus

State of Maharashtra
(at the instance of
Senior Inspector of Police,
Nashik Road Police Station
vide C.R. No. I-26 of 2017) ... Respondent

***WITH
INTERIM APPLICATION NO. 3646 OF 2022
IN
CRIMINAL APPEAL NO. 1080 OF 2022***

Rama Kisan Chavan,
Aged about 47 years,
Residing at Sankalp Housing
Society, Falt No.B-3, Near
Panchkrishna Lawans, Konark Nagar,
Adgaon Shivar, Nashik, District Nashik

at present under going the sentence
Imposed upon them at Nashik Road
Central Prison, Nashik

... Applicant

Versus

State of Maharashtra
(at the instance of
Senior Inspector of Police,
Nashik Road Police Station
vide C.R. No. I-26 of 2017)

... Respondent

Mr. Nitin Sejpal a/w Akshata Desai for Applicant in IA/952/2021.

Mr. Aniket Vagal for the Applicant in IA/3646/2022.

Mr. A. R. Kapadnis, APP for the Respondent-State.

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

DATE : 20 FEBRUARY 2023

Order (Per R. N. Laddha, J.) :

The applicants have preferred these Applications for suspension of sentence and release on bail during the pendency of the their respective Appeals.

2. The trial Court, by the judgment and order dated 20 December 2019 in Sessions Case No. 244 of 2017, convicted the applicants/accused, along with co-accused Anil Digraskar, for the offences punishable under Sections 302, 120B, 323 read with

Section 34 of the Indian Penal Code and Sections 37(1)(3) read with 135 of the Bombay Police Act.

3. According to the prosecution, on 20 January 2017 at about 9:15 pm at Triveni Park, Nashik Road, Nashik, the accused persons, in furtherance of their common intention, committed the murder of Surendra alias Gharu Siddaram Shejwal.

4. In *Niranjan Singh & Anr. v/s. Prabhakar Rajaram Kharote & Ors.*¹, it was annunciation that a detailed examination of evidence and detailed documentation of the merits should be avoided while passing orders on bail applications.

5. Considering the above principle, we have heard Mr Nitin Sejpal and Mr Aniket Vagal, learned counsel for the applicants and Mr A. R. Kapadnis, learned Additional Public Prosecutor for the respondent-State.

6. Learned counsel for the applicants, in unison, submitted that the learned trial Court had given undue weightage to the testimony of Gaurav Khajekar (PW12). Though the alleged incident occurred on 20 January 2017, Gaurav PW12, on 28 January 2017, for the first time, disclosed about witnessing the incident. They invited our attention to the cross-examination of PW12 and submitted that

¹ (1980) 2 SCC 559

the conduct of this witness was quite unnatural as he left the deceased who was related to him in a pool of blood. He was not bothered to take him to the hospital and left the spot. Additionally, his conduct in not informing the Police and the mother of the deceased Surendra is another factor which casts doubt on his testimony.

7. It is submitted that once the substantive evidence is discarded, corroborative evidence like recovery of incriminating articles is of no consequence. In their view, even otherwise, the recovery effected by the investigating agency from all the accused from the same place has lost its significance for non-compliance with the mandatory requirement of Section 27 of the Evidence Act.

8. Mr A. R. Kapadnis, the learned APP for the respondent-State, submitted that non-disclosure of the incident to the Police immediately could be a ground to discard the evidence of PW12. According to him, the impugned conviction is based on the testimony of PW12, an eyewitness to the incident and other circumstantial evidence. It is submitted that there is corroboration to the ocular version of PW12 through the recovery of incriminating articles. In their view, recoveries cannot be doubted merely because the incriminating articles were recovered from the same area.

9. Apart from other witnesses, the prosecution has produced three eyewitnesses in support of its case, namely Vikram Porje (PW1), Santosh Pille (PW17) and Gaurav Khajekar (PW12). PW1 and PW17, however, did not support the prosecution's case to the extent that the accused had assaulted the deceased. This case primarily hinges on the testimony of eyewitness Gaurav Khajekar (PW12). He stated that he did not take the deceased to the hospital, nor he informed about the incident to the Police or relatives of the deceased. He also stated that he had attended the deceased's funeral and met the mother of Surendra and his relatives to console them. He also stated that he did not go to the hospital to see the deceased Surendra. However, he did not disclose the alleged fact of witnessing the incident till 28 January 2017. Further, it revealed from the record that the recovery effected by the investigating agency from all the accused from the same area.

10. Considering these facts, the case of the suspension of sentence and the grant of bail is made out. The Applications are, accordingly, allowed in the following terms:

ORDER

(a) During the pendency of the present Appeals, a substantive sentence imposed upon Applicants is

suspended, and they be released, on bail, on the execution of a P.R. Bond of Rs.25,000/- each, with one or two solvent sureties in the like amount, to the satisfaction of the learned trial Court.

(b) The Applicants shall remain present before this Court as and when directed.

9. Interim Applications stand disposed of.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

BIPIN
DHARMENDER
PRITHIANI

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