

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

***INTERIM APPLICATION NO.3031 OF 2022
IN
CRIMINAL APPEAL NO.1049 OF 2018***

Amir Gaus Pathan ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Harshad Bhadbhade, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent– State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 9th FEBRUARY 2024

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.1) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant alongwith other co-accused vide Judgment and Order dated 10th August 2018, passed by the learned Additional

Sessions Judge, Sangli, in Sessions Case No. 211 of 2015, has been convicted for the offence punishable under Sections 302 r/w 34 of the Indian Penal Code ('IPC'). For the aforesaid offence, the applicant has been sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default, to suffer rigorous imprisonment for 6 months. The applicant has also been convicted for the offence punishable under Section 25 of the Indian Arms Act. For the said offence, the applicant has been sentenced to suffer imprisonment for 1 year and to pay a fine of Rs.500/- in default, to suffer rigorous imprisonment for 3 months.

4. As far as the offences under Sections 109, 120B r/w 34 of IPC and under Section 27 of the Arms Act are concerned, the applicant has been acquitted of the aforesaid offences.

5. Perused the papers. Initially seven accused came to be arrested in connection with the offence which took place on 22nd February 2015. It is the prosecution case that the accused entered the

Carrom Board Club which was run by the deceased – Akram Shaikh and assaulted him and also fired a pistol at him. In the said incident, the deceased succumbed to his injuries. The said incident of assault was allegedly seen by PW1 – Mohsin Munna Baig, however the said witness has turned hostile. PW4 – Firoj Mujawar, another witness has stated that he saw the accused running from the said Carrom Board Club, soon after the assault. The said witness has identified the applicant in the Test Identification Parade ('TIP'). This is *prima facie* the only material *qua* the applicant. As far as motive is concerned, the same has been disbelieved by the learned Judge. As far as TIP is concerned, the same has not been held in accordance with the High Court Criminal Manual and as such has not been relied upon by the learned trial Judge. Although, there is recovery of pistol at the instance of the applicant, it appears that no ballistic report has been brought on record by the police to show that the very same pistol was used in the commission of the offence or to show that the bullets which were found in the body were fired from the applicant's pistol. It is also pertinent to note that in the cross-examination of PW3 – Altabh

Jamadar, the panch to the spot panchanama, the said witness has stated that the police were making enquiry whether anybody had seen the incident, but no one came forward. It may be noted that PW4 – Firoj Mujawar, is a relative of the deceased and is alleged to have seen the accused fleeing from the spot, soon after the assault. The statement of PW4 was recorded on the next day. The applicant is in custody for about 8 years.

6. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, 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 four 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.

7. Interim Application is allowed in the aforesaid terms and accordingly disposed.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.