

3. The applicant alongwith other co-accused vide judgment and order dated 20th November 2012, passed by the learned Additional Sessions Judge, Solapur in Session Case No. 276 of 2008, has been convicted as under:

— for the offence punishable u/s. 364 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for six months;

— for the offence punishable u/s. 365 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months;

— for the offence punishable u/s. 302 r/w. Section 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one year;

— for the offence punishable u/s. 342 r/w. Section 34 of the Indian

Penal Code, to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for 15 days;

— for the offence punishable u/s. 384 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months;

— for the offence punishable u/s. 201 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for six months.

All the aforesaid sentences were directed to run concurrently.

After deposit of fine amount by accused persons, an amount of Rs.25,000/- was directed to be paid to the complainant as compensation under Section 357 of the Code of Criminal Procedure.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that the applicant is better placed than

co-accused – Lally @ Raviraj Suresh Lengare and Ganesh Ghuge and as such, the applicant's sentence be suspended and he be enlarged on bail.

5. Perused the papers. The prosecution case rests entirely on circumstantial evidence. Admittedly, there is no evidence of recovery of any weapon or clothes at the instance of the applicant, nor is there any evidence of CDR record *qua* the applicant. It only appears that the applicant came to be arrested alongwith other accused.

6. As far as co-accused Lally @ Raviraj Lengare is concerned, there was evidence of CDR, that Lally made number of calls to the accused No.1, one day prior to the incident and on the day of the incident. As far as co-accused - Ganesh Ghuge is concerned, the evidence *qua* accused Ganesh is that of CDR and recovery of some articles. As noted above, there is no evidence either of CDR or recovery or any other evidence *qua* the applicant. Even the evidence of conspiracy is *prima facie* doubtful.

7. Consider 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 - Jitendra Mohan Walmiki 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.

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

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.