

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3638 OF 2024
IN
CRIMINAL APPEAL NO. 1064 OF 2017

Ashish Rajpal Kajaniya .. Applicant
Versus
The State Of Maharashtra .. Respondent

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Ms. Anjali Patil, for the Applicant.

Dr. Ashvini A. Takalkar, A.P.P. for the State/Respondent.

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CORAM : NITIN W. SAMBRE &
MANJUSHA DESHPANDE, JJ.
DATED : 24th SEPTEMBER, 2024

ORDER (PER MANJUSHA DESHPANDE, J) :-

1. The Applicant has filed present Interim Application for suspension of sentence, in the Criminal Appeal filed by him, challenging the Judgment and Order dated 16.12.2017, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 687 of 2014, convicting him for the offence punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 4 read with Section 25 of the Arms Act.

2. Pending the Appeal, the Applicant has filed the

present Interim Application seeking suspension of his sentence, in Sessions Case No. 687 of 2014, registered at the instance of Khadaki Police Station, vide C.R. No. 146 of 2014, on any terms and conditions, as the Court may deem fit and further seeking his release on Bail.

3. It is the contention of the Applicant that, according to the prosecution, PW-1 Mallesh Vijay Gaikwad has lodged a complaint on 01.07.2014 at about 1.00 p.m., contending that one Ravi Pardeshi and Rohan Kokakallu came to his house to catch pigs and to take it to Bopodi. After catching the pigs, the informant, Vicky and Rohan proceeded on one motorcycle and Ravi and Aakash proceeded to Khadaki Bazar on another motorcycle.

At about 7.30 p.m. Mallesh Gaikwad and Ravi Pardeshi were proceeding on a motorcycle to Wanwadi. They saw Nilesh Pawar proceeding on a Aactiva vehicle. Thereafter, Nilesh Pawar proceeded ahead to them towards Wanwadi. They followed him, when they reached near one Prakash Flower Shop, they saw Nilesh Pawar was stopped by four persons. Thereafter, altercation took place between Nilesh Pawar and other persons. Ravi Pardeshi told Mallesh Gaikwad to call their other friends therefore he proceeded and came back with his other friends and saw that Nilesh Pawar and Ravi Pardeshi were lying on the road and they were having injuries on their head.

Ravi and Nilesh were taken to the hospital, where after examining them the Doctor declared Nilesh to be dead, and Ravi was admitted in the ICU. PW-1 proceeded to the Police

Station and lodged a complaint. The said complaint was reduced into writing and registered as FIR.

On investigation being carried out, the charge-sheet was filed and after the trial, the Applicant has been convicted by the learned Additional Sessions Judge, Pune.

4. It is the contention of the Applicant that, though he has filed Appeal against the said Judgment and Order of conviction, however the decision in the Appeal will take its own time. The Applicant has already undergone imprisonment for a period of 7 years. Considering that the Appeal is likely to take time for final disposal, the Applicant has requested to grant him Bail pending the Appeal.

5. It is the contention of the Applicant that he has a very good case on merits, there is no sufficient evidence to prove his complicity in the offence. According to the Applicant, he has been falsely implicated and he has nothing to do with the alleged offence. According to the deposition of PW-1 who lodged FIR against unknown person, claims to have identified accused No.4, however he has not attributed any role to the present Applicant.

6. It is the contention of the Applicant that as per the deposition of PW-2, who is an injured eye witness, he could have been the best witness to identify the present Applicant. However, in his cross-examination he has admitted that the Police had told him to identify the accused in the Test

Identification Parade by showing him photographs. He has given statement before the Magistrate as per the say of the Police. In fact, he has not seen who assaulted him and Nilesh.

7. Since the identification of the present Applicant itself has failed, any other evidence would be of no consequence. Even otherwise, there is no witness who have supported the case of the prosecution. PW-3 the Flower Shop owner and PW-4 the Pan Shop owner have categorically stated that, they do not know as to who assaulted Nilesh Pawar.

8. The other evidence which is relied on by the prosecution is the recovery panchanama of the clothes and weapons allegedly used by the present Applicant during the offence. PW-9 is the panch witness, who has been examined in support of the said memorandum panchanama. The said witness has not supported the memorandum and recovery which is claimed to be made at the instance of the Applicant. In his cross-examination he has categorically denied that, the accused has produced weapons and clothes before him which were seized by police under panchanama which was later sealed and his signature was obtained on it.

9. It is contended that, from the deposition of witnesses and other evidence relied upon by the prosecution, the complicity of the accused is not proved.

10. The evidence against the present Applicant is totally unreliable. There is no eye witness to the incident. The other corroborative evidence also suffers from infirmities and inconsistencies. The testimony of P.W.2, who is injured eye witness in the incident does not name the present Applicant.

11. The learned advocate for the Applicant has brought to our notice that the co-accused in the present Appeal have been granted bail vide order dated 31st July, 2024 in Interim Application NO.625 of 2023 and order dated 28th August 2024 in Interim Application No. 3245 of 2024. Hence, the Applicant who is similarly placed is entitled to similar reliefs on the ground of parity. We have perused the Application and the supporting documents. After going through the documents, prima-facie we are of the opinion that, the prosecution case against the Applicant is not based on cogent evidence, which would prove complicity of the Applicant. Neither the eye witness nor the corroborative evidence is trustworthy and cogent. The Applicant is very much likely to succeed in the pending Appeal.

We have gone through the said order. After going through the said order, we find substance in the statements of the Applicant. Therefore considering the Application on merits as well as on parity, the application of the Applicant deserves to be allowed.

12. Hence, neither the presence of Applicant at the scene of offence nor the recovery of his clothes and weapon,

which is allegedly made by the Investigating Officer proves the case of the prosecution. There is no evidence as against the present Applicant. Therefore prima-facie we are of the opinion that there is no sufficient evidence against the present Applicant which would subsequently entail in sustaining the conviction.

13. Considering that the Appeal will take its own time for final disposal, and the Applicant has already undergone 7 years of imprisonment, it would be appropriate to suspend the sentence of conviction passed against the present Applicant, and grant him bail on following conditions:

: O R D E R :

- (i) The sentence imposed upon the applicant Ashish Rajpal Kajaniya vide judgment and order dated 16th December, 2017, in Sessions Case No.687 of 2014, is hereby suspended during the pendency of the Appeal;
- (ii) 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;
- (iii) The Applicant shall report to the concerned police station on first Monday of the month, once in every three months, till their Appeal is finally disposed off;
- (iv) The Applicant shall inform from time to time, the concerned police station about his current residential address and mobile contact number

and/or change of residence or mobile details, if any.

14. The Interim Application is allowed in the aforesaid terms and is accordingly disposed off.

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

(MANJUSHA DESHPANDE, J.)

(NITIN W. SAMBRE, J.)