

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4973 OF 2024
IN
CRIMINAL APPEAL NO. 189 OF 2019

Byatrya @ Krushna Sadanand .. Applicant/
Chadwadkar Appellant

Versus

The State Of Maharashtra And Anr. .. Respondents

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Mr. Hrishikesh Mundargi i/b Ms. Shradha Sawant, for the
Applicant/Appellant.

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 11th DECEMBER, 2024

P.C:-

1. The Applicant having been convicted for committing an offence punishable under Sections 302, 394 and 201 read with Section 34 of the Indian Penal Code ("IPC"), was sentenced to suffer rigorous imprisonment for life alongwith the other sentences directed to run concurrently being imposed for his conviction under Section 394 and 201 of the IPC.

The Appeal filed by the Appellant has been admitted on 21.02.2019 and this is the second Application taken out under Section 389 of the Cr.P.C. for grant of bail, pending the Criminal Appeal.

Mr. Mundargi do not dispute that on the first occasion the Bail Application was rejected and this is an Application filed for the second time, claiming parity with the co-accused Vicky @ Vaibhav Dattatray Kale, who is released on bail on 14.11.2024, despite the rejection of his first application.

On 27.06.2019 the Application filed by the Applicant was rejected by recording that, the case of the prosecution based on circumstantial evidence which was led before the trial Court, where the accused persons were seen drinking liquor together at the place where the body of the deceased was found. It was recorded that the persons who had seen the accused have turned hostile but reliance was placed upon the recovery under Section 27 of the Indian Evidence Act, 1872, and as far as the present Applicant is concerned, since the blood was found on his clothes which have been detected as human blood and no explanation was offered and so also the recovery of sickle relied upon by the prosecution having blood stains, was the ground on the basis of which the Application was rejected.

2. We had an opportunity to consider the Application filed by the accused No.1 Vicky @ Vaibhav Dattatray Kale and the rejection of the Application of the present Applicant was placed before us.

We have perused the case of the prosecution as it surfaced before the learned trial Judge and it is the case of the prosecution that the deceased was in the company of the accused persons, who were found drinking liquor near the crime scene on the date of the incident and on that basis they came to be arrested.

As far as the accused No.1 is concerned, he made a disclosure statement, pursuant to the blood stained clothes which were seized from him. There is also reference to the statement made by accused No.2 i.e. the present Applicant, when a sickle was seized at his instance.

While recording the case of the prosecution, particularly relying upon the evidence of PW-4, PW-7 and PW-8 who were examined for establishing the circumstances of the deceased being in the company of the accused persons, having been turned hostile, and though they were excessively cross-examined, we opined that their evidence will have to be appreciated alongwith the corroborative evidence when the Appeal is finally heard.

3. We also examined the prosecution case against the present Applicant.

As far as the recovery of sickle, which is an incriminating circumstance against the present Appellant/Applicant which has been considered by the learned Judge, our attention is invited to the panch witness Mangesh Pandhurlikar (PW-9), acting as a panch to the discovery of the scythe, who have deposed about the scythe which had blood

stains and it was seized in pursuance to the memorandum panchanama executed on 05.06.2017.

In the cross-examination of this witness, he admit that the panchanama did not mention that the scythe had blood stains. He also admit that there was no identification marks fixed on the weapon which was seized which bear his signature.

The authenticity of the recovery and seizure through the panchanama (Exh-60) and the identification marks (Exh-62) will be determined at the time when the entire evidence, which was appreciated by the trial Court will be considered at the time when the Appeal is finally heard.

However, while considering the Application of accused No.1 we have found the circumstances to be weak in nature and particularly as PW-4, PW-7 and PW-8 having turned hostile, we had clearly expressed that the evidence will have to be re-appreciated at the time when the Appeals are finally heard, since they are only admitted and they are not likely to be heard soon, we see no reason why the observations made by us in the order dated 14.11.2024, shall not apply in the case of the present Applicant.

4. In the wake of the pendency of the Appeal filed by the Appellant raising all these grounds, impinging upon the findings recorded in the Judgment on the basis of which the conviction has been imposed alongwith the sentence of life imprisonment, we deem it appropriate to pass the following order :

: ORDER :

- (i) The sentence imposed upon the Applicant in Sessions Case No.280 of 2017, vide impugned order dated 22.11.2018, passed by the Additional Sessions Judge-4, Nashik, stand suspended during the pendency of the Appeal No.189 of 2019.
- (ii) Applicant is directed to be released on bail in Sessions Case No. 280 of 2017 arising out of CR No.223-2017 registered with Panchavati Police Station, District Nashik on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (iii) After his release from jail and during the pendency of the present Appeal, the Applicant shall mark his attendance with Panchavati Police Station, on every first Monday of every trimester between 3.00 p.m. to 5.00 p.m.
- (iv) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(MANJUSHA DESHPANDE, J.)**(BHARATI DANGRE, J.)**