
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.138 OF 2024

IN

CRIMINAL APPEAL NO. 840 OF 2018

Jamaluddin Nizamuddin Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Abhishek Yende a/w Mr. Rishikesh Dube and Mr. Ankit Trivedi, Advocates for the Applicant.

Ms Sharmila S. Kaushik, APP, for the Respondent-State.

CORAM : SARANG V. KOTWAL &

MANJUSHA DESHPANDE, JJ.

DATE : 24th JUNE 2025

P.C.:

1. This is an Application for suspension of sentence pending the Applicant's Criminal Appeal No.840 of 2018. The Applicant was the Original Accused No. 1 in Session Case No. 569 of 2014, before the Additional Session Judge, Thane. There was one more accused i.e. Bharat Koli @ Rony, who had faced the trial as the Accused No. 2. At the conclusion of the trial the learned Judge vide his Judgment and Order dated 2nd May 2018, convicted both of them for commission of offence punishable under Sections 302, 201, 324, 323 r/w 34 of the

IPC. The major sentence imposed on them was imprisonment for life. The Accused No. 2 has filed a separate Appeal and is granted bail pending his Appeal.

2. The prosecution case is that, deceased Raju Jagtap was looking after parking at Savarkar Nagar, Thane. He was collecting the money for parking. The present Applicant was working for him and was collecting money. The Applicant was giving him accounts. There was some dispute about their accounts and the amount which was to be given to Raju by the Applicant. The incident took place on 26th July 2014. The Applicant went to the room of Raju Jagtap, he and the Accused No. 2 assaulted Raju. It is alleged that the Applicant gave blows with wooden log on the head of Raju. After that, he poured kerosene on Raju and set him on fire. The Applicant threatened others, who ran away. Raju succumbed to injuries. One of the eye witnesses informed Raju @ Rajendra Jagtap's elder brother Shashikant Jagtap, who gave his FIR at Wagle Estate Police Station, vide C.R. No.195 of 2014. The name of the present Applicant was specifically mentioned in the FIR, as one Komal Chaudhari had informed the first informant about the incident as he had seen it.

3. Heard Mr. Abhishek Yende, learned Counsel for the Applicant and Ms Sharmila Kaushik, learned APP for the Respondent -State.

4. Learned Counsel appearing for the Applicant submitted that the important witness in this case was Komal Chaudhari, who had given information to the first informant- Shashikant, but Komal Chaudhari is not examined. PW-2 who was the alleged eye witness, had turned hostile, therefore the only evidence against the Applicant was that of the alleged eye witness PW-3 Mahadev Pawar. Learned Counsel submitted that there are lot of discrepancies in his statement. His deposition is not reliable and, therefore, the Applicant be granted bail.

5. Learned APP on the other hand submitted that, the evidence of PW-3 is sufficient to base the findings of conviction against the Applicant.

6. We have considered the submissions. It has rightly submitted by both the learned Counsel that PW- 3 is the crucial witness. He has deposed that he was knowing both of them. He deposed about Raju's job of collecting money for parking vehicles at Savarkar Nagar. The Applicant was looking after Raju's business and he used to give him the collected money. PW- 3, Sandeep Raut, Komal Chaudhari, the Applicant and the deceased Raju were residing together in Raju's room in Savarkar Nagar. The Accused No. 2-Bharat Koli used to meet the Applicant at the same room. The incident took place on 26th July 2014, though it is wrongly typed as 26th August 2014 in the deposition. The

incident occurred at about 11:00 p.m. to 11:30 p.m. Raju asked the Applicant for the accounts, there was a quarrel. The Applicant- Jamal started assaulting Sandeep by kick and fist blows, who tried to intervene between Raju and the Applicant. After that, both the accused assaulted Raju with kick and fist blows, then the Applicant took a wooden log from one corner and assaulted Raju on his head. He sustained serious injury and he fainted and collapsed. Both the accused then assaulted Sandeep with fist and kick blows. In the meantime, the Applicant took kerosene and poured on Raju. The Applicant set Raju on fire using a matchstick. The others were threatened. They ran away from the spot.

7. Learned Counsel invited our attention to the cross-examination of this witness in which there is one stray admission, wherein the said witness PW- 3 has deposed that, on the night of incident at about 08:00 p.m. he returned to the room of Raju and slept in an auto-rickshaw. The said auto-rickshaw was adjacent to the said room. Learned Counsel submitted that, therefore it is quite clear that the said witness PW-3 could not have witnessed the incident. He further submitted that, according to PW- 3, he also had suffered bleeding injury on his head in the incident but no medical evidence is produced on record in support of his contention.

8. We have considered these submissions, however, at the stage of consideration of Bail Application it is not possible to record a finding that PW- 3 is not deposing the truth. He has clearly described the incident in great details. He used to reside in the same room where the deceased and the Applicant were residing. The ocular evidence is supported by the post-mortem notes which show that the deceased had suffered the head injury caused by the wooden log. The cause of death was also the head injury. There were 46% burn injuries on the dead body. This medical evidence supports the case of PW- 3. At this stage, the evidence cannot be appreciated in more details. No case for bail is made out, therefore, the Application is rejected. However, since the Applicant is in custody from 08th August 2014, the Appeal be listed for final hearing in the weekly board commencing from 21st July 2025.

9. The learned counsel for the Applicant is granted liberty to mention the matter for taking up for final hearing if the matter does not reach within a reasonable time.

10. The Application is disposed of.

[MANJUSHA DESHPANDE, J.]

[SARANG V. KOTWAL, J.]