

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

**INTERIM APPLICATION NO.3924 OF 2024
IN
CRIMINAL APPEAL NO.1071 OF 2024**

Mirchu Washalrai Sharma

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. A. P. Mundargi, Senior Counsel i/by Ms. Paavani Chadha, for the
Applicant.

Ms. Priyanka S. Rane, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATED : 08th JULY, 2025

P.C. :-

1) This is an Application for bail pending final disposal of the Criminal Appeal No.1071 of 2024. The Applicant was the original Accused No.1 in Sessions Case No.18 of 2011 before the learned Additional Sessions Judge-1, Kalyan. The learned Judge *vide* his Judgment and Order dated 28/08/2024, convicted the Applicant for commission of offence punishable under Section 307 of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.50,000/- and in default of payment of fine, to suffer further R.I. for one year. There were other two accused i.e. Accused Nos.2 and 3 who were acquitted from that charge. The Applicant was in custody from

19/10/2010 to 28/06/2013 and thereafter, from 28/08/2024 on which date, the impugned Judgment and Order was passed.

2) The prosecution case is that, on 09/09/2010 the informant– Dharmendra alias Kalu Jamandas Bajaj had gone to Sai Palace Hotel with his friends – Raju and Jamnumal. The Applicant along with one Dayal and one unknown person came there. The Applicant picked up quarrel with Dharmendra because of the previous quarrel and then took out a revolver from his pant pocket and fired at left shoulder and stomach of Dharmendra. He again fired two more rounds which hit the stomach and upper waist of Dharmendra. He came out running. The Applicant started his Santro Car and struck him while rushing away from the spot thereby causing fracture to his right leg.

3) During trial, the prosecution relied mainly on the evidence of the injured Dharmendra himself who was examined as PW-1.

4) Learned Senior Counsel appearing for the Applicant submitted that the evidence of PW-1 is not reliable. He has given three different versions of the incident. Those versions are inconsistent. There are lot of improvements from his story in the F.I.R. The cross-examination shows that the injured – PW-1 was threatened by other

gang leaders and on one previous occasion when the Applicant was in jail, there was an incident of firing at PW-1. He, therefore, submitted that the informant – PW-1 had other enemies. The Applicant is involved only because of their previous enmity. He submitted that the Ballistic Expert's opinion shows that the bullets recovered from the stomach of the informant did not match with the pistol seized from the spot. The same Ballistic Examiner's Report mentions that the bullets which were recovered from the stomach of the informant were fired from a pistol which was never recovered. They were not fired from a revolver as explained by the informant. He has wrongly identified the weapon in the Court. This just shows that he had tried to implicate the Applicant falsely.

5) Learned APP opposed these submissions. According to her, there was no reason for PW-1 to implicate the Applicant falsely. There is no inconsistency in the description of the main incident of firing. She further submitted that the evidence of PW-5 API Sonawane shows that immediately after the incident, the Santro Car was driven away from the spot. The police officers tried to stop that car by putting barricades but the Car went ahead in a high speed and it was abandoned. To that extent, there is an independent corroboration to

the incident.

6) We have considered these submissions.

7) As far as the medical evidence is concerned, Dr. Amol Sonavane who was examined as PW-7 has deposed that he had examined PW-1 at 02:25 a.m. on 10/09/2010 and had found the following injuries :-

- (i) Entry wound of bullet over left shoulder tip, size approximately 1 cm in diameter;
- (ii) Entry wound over right lower abdomen, size approximately 10 cm away from umbilicus in right iliac fossa, size approximately 1 cm in diameter;
- (iii) Entry wound over left hypochondriac in anterior axillary line and mid axillary line, size approximately 1 cm in diameter;
- (iv) Fracture right side tibia and fibula.

He further deposed that the bullets lodged inside the stomach which were four in numbers, were taken out.

8) PW-8 Dr. Gaikwad deposed that those four bullets taken out from the body of the injured, were handed over to the police.

9) PW-9 Dr. Ashit Hegade was attached to Hinduja Hospital. The informant was first taken to Shridevi Hospital at Kalyan and then was shifted to Hinduja Hospital at Mahim. He was admitted to Hinduja Hospital on 19/09/2010. According to PW-1, he was in the hospital till 01/10/2010. Undoubtedly, the injuries suffered by him were quite serious.

10) Learned Senior Counsel submitted that there were three different versions of the incident. The deposition of PW-1 mentions that, the Applicant picked up a quarrel, took out a revolver fired twice at the informant/PW-1 and then again fired two more rounds. His following version in the same examination-in-chief mentions that, one unknown person caught PW-1 from backside and pointed revolver at his head. PW-1 gave a jerk. The revolver fell down. It was picked up by the Applicant and the Applicant started firing at him. Learned Senior Counsel submitted that this second version shows that the revolver was not taken out by the Applicant but it was picked up by the Applicant from the floor and then was used for firing. However, we are unable to accept these submissions. The deposition does not mention that the Applicant fired at PW-1 with the weapon which was picked up by him from the floor. The description of the incident given

in the first paragraph of his deposition, is not inconsistent. It was always the case of the PW-1 that the Applicant took out his revolver from his pant pocket and fired four times at the informant. The fracture of lower leg is consistent with the story of striking it with a Santro Car.

The F.I.R. attributes the role of firing to the Applicant as well as to one unknown person. It was lodged immediately in the night. At that time, understandably he was in a serious health condition. It was too much to expect from him to describe the incident in great details. We find there is a consistent version throughout that the Applicant had fired at him. The injuries were quite serious. He was in the hospital for a long period. Four bullets were fired at him which were found in his stomach. There is the direct evidence of the injured himself against the Applicant. The offence is quite serious. Therefore, we are not inclined to allow this Application considering the gravity of the offence, the quality of evidence and the past history. Accordingly, the Application is rejected.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)