

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

**INTERIM APPLICATION NO.5178 OF 2024
IN
CRIMINAL APPEAL NO.1316 OF 2024**

Samadhan Dadaji Dhivare

.....Applicant

Versus

The State of Maharashtra
and another

.....Respondents

Ms. Ankita A. Pawar, Advocate a/w. Ajinkya V. Taskar for the
Applicant.

Mr. K.V. Saste, APP for the Respondent-State.

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

DATE : 11th JULY, 2025

P.C. :

1. This is an Application for bail pending Appeal. The Appeal is already admitted. The Applicant was convicted by the Additional Sessions Judge, Malegaon vide his judgment and order dated 13.11.2024 in Sessions Case No.123/2019. The Applicant was convicted for the offence punishable under Section 302 of IPC and was sentenced to suffer life imprisonment and to pay a fine of Rs.20,000/- in default to suffer RI for one year.

2. Heard Ms. Ankita Pawar, learned counsel for the Applicant and Mr. K.V. Saste, learned APP for the Respondent-State.

3. The Applicant was arrested on 27.1.2019 and since then for about more than six and half years, he is in custody. The prosecution case is that on 27.1.2019, the Applicant was present at the spot with his friends Siddharth Jagtap, Sharad Bhavar and Daya. At that time the deceased came on his two-wheeler and struck the Applicant. He was riding a scooty. There was a quarrel between the Appellant and the deceased. The Appellant gave a blow with a knife on his chest and then ran away from the spot. The injured was taken to the hospital, but, he was declared dead by the doctor. The investigation was carried out and the charge-sheet was filed.

4. During the trial the prosecution examined eight witnesses. The eye witnesses have turned hostile. The learned trial Judge relied on the other circumstances holding that the Appellant was present at the spot as deposed by PW-6 Siddharth Jagtap. The Appellant did not give truthful version

and, therefore, his defence was false. He ran away from the spot. Human blood was found on his pant as also on the knife recovered at his instance. On these grounds, the Appellant was convicted.

5. Learned counsel for the Applicant submitted that all these circumstances relied by the learned Judge are not proved by the prosecution. The prosecution has to prove their case beyond reasonable doubt. The learned Judge erred in basing the conviction on the purported false defence taken by the Appellant.

6. The learned APP submitted that though the eye witnesses have turned hostile, there are circumstances about the oral dying declaration, recovery of a blood stained weapon and blood stained clothes of the Appellant. Therefore, the conviction is rightly recorded.

7. We have considered these submissions. PW-1 Sagar Pawar was a hostile witness. In the examination-in-chief he has stated that he was present near the spot. He reached the spot on hearing shouts. By that time, Prakash Gaikwad had

already suffered injury with knife.

8. PW-2 Bhushan Ahire was also declared hostile. He deposed that he heard shouts and reached the spot. At that time, the Appellant was present at the spot. The deceased was also present. The Appellant threw away some article and he ran away from the spot. Prakash had suffered a knife injury. This witness was declared hostile.

9. PW-3 Dr. Sumedh Bhamare is the doctor who had conducted the postmortem examination. The deceased had suffered one incised wound of the size 2 x 1 x 4 cm. It had pierced the heart and it was the cause of death. There was only one stab injury.

10. PW-4 Shatrughan Gaikwad was son of the deceased who did not witness the incident. His evidence does not help the prosecution.

11. PW-5 Pravin Madavwade was a pancha for seizure panchnama. In his presence, the clothes of the Appellant were seized, but, he has deposed that the clothes were shown by the police to him. He has not deposed anything about the presence

of the Appellant at the time of that panchnama. He was a pancha for seizure of the clothes of the deceased as well.

12. PW-6 Sidharth Jagtap was also declared hostile, but, he has deposed that he had seen the incident where one motorcycle rider struck the deceased. He was not knowing either of them. The person who was hit by the vehicle assaulted the deceased. But, PW-6 did not identify the Appellant in the Court.

13. PW-7 A.P.I. Rameshwar Motale was the investigating officer. He has deposed about the investigation carried out by him. He has deposed about the arrest of the Applicant and seizure of his clothes. He has also deposed about the recovery of a knife which was recovered from under a tree near a crematorium.

14. PW-8 Sachin Pawar has deposed that he went to the spot on hearing the shouts. The deceased had suffered injuries on the chest. The deceased told this witness that the Applicant had assaulted him. He had named the Applicant. This amounts to oral dying declaration, but, his cross-

examination shows that this witness had not told the police that the deceased had given name of the Applicant.

15. As rightly submitted by learned counsel for the Applicant, the eye witnesses have turned hostile. Therefore, they are not reliable witnesses. PW-8 has deposed about the oral dying declaration but his cross-examination shows that he has not named the Applicant in the police statement. Therefore, to that extent, his evidence was false.

16. The weapon was recovered from the open space below a tree. Therefore, that is also not an incriminating piece of circumstance. As submitted by learned counsel for the Applicant, the prosecution has not established that the blood found on the clothes of the Applicant was that of the deceased. In any case, even as per the prosecution case and as it is reflected in the oral dying declaration, the incident occurred on the spur of moment. The deceased was riding his two-wheeler and he hit the Applicant who was standing on the road. A quarrel started and in that quarrel the Applicant has given one blow. Therefore, there is force in the submission of learned

counsel for the Applicant that it could be a lesser offence.

17. Considering all these aspects, the Applicant has made out a case for grant of bail during pendency of the Appeal.

18. Hence, the following order:

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.1316/2024, the Applicant is directed to released on bail on his executing a PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
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DESHMANE

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