

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

**INTERIM APPLICATION NO. 5259 OF 2024
IN
CRIMINAL APPEAL (ST) NO. 26338 OF 2024**

Shrikant Eknath Gundale	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Ajay Talreja for Applicant.
Smt. M. H. Mhatre, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 2 JANUARY 2025

PC :

1. This is an application for bail pending final disposal of the Appeal preferred by the applicant challenging the Judgment and order dated 06.03.2024 passed by the learned Additional Sessions Judge - 2, Vasai, in Sessions Case No.82 of 2018.

2. The prosecution case is that, Shashikant and the present applicant Shrikant were brothers and were sons of one Lilabai. The dispute was in respect of Lilabai's room. She was suffering from cancer before her death. As per the prosecution case, Shashikant

and his wife Aarti looked after her. The Applicant believed that, Shashikant's wife Aarti was intending to sell that room and the applicant was opposing her efforts. Because of this dispute the incident took place on 11.06.2018 in the afternoon. According to the prosecution case, the applicant went to the house of Aarti and gave her blows with a knife. She succumbed to her injuries. The applicant was arrested on 11.06.2018 and since then he is in custody.

3. Heard Mr. Ajay Talreja, learned counsel for the applicant and Smt. Mhatre, learned APP for the State.

4. Learned counsel for the applicant submitted that, though, there are eye witnesses to the incident, two main eye witnesses have deposed that blows were given on the left side of the shoulder; whereas, medical evidence shows that the blow was on the right side of the chest. Therefore, those eye witnesses are not believable. He further submitted that the murder weapon was not found at the spot; only handle was found. The edge of the weapon was found in the pocket of the accused when he was

arrested; which itself is not believable. He submitted that he would not have carried part of the murder weapon in his pocket. Learned counsel submitted that the applicant is in custody since 2018, therefore, he be released on bail.

5. Learned APP opposed these submissions on the basis of the evidence of the eye witnesses.

6. We have considered these submissions. We have gone through the evidence annexed to this application. There are four important witnesses in this case. PW-1 Vijay Patil had not actually seen the assault, but he had seen that the deceased was already injured and she came outside her house. She was shouting and she had kept her hand on her chest. She was followed by the applicant. This witness had identified the applicant through the video conferencing.

7. The next witness is PW-3 Priya Burkule. She is an important witness. She has described the incident in detail. She has stated that, in the afternoon on that date, she saw the applicant standing near the deceased Aarti. She had put her hand

on her chest. The applicant was armed with knife. She actually saw the applicant inflicting blows of knife on Aarti's chest. This witness also raised shouts. After that, the neighbours from the neighbouring lane came to Aarti's rescue. The applicant showed the knife in his hand to everybody and by threatening them went away from the spot. At this stage, it can be seen that her evidence is not shaken in the cross-examination. She has not stated that the applicant had assaulted on the left side shoulder of the deceased.

8. The next two witnesses are PW-4 Nirmala Yadav and PW-10 Jyoti Miriyala. Both of them have also described the incident of assault. However, they have stated that the blow was given on the left side of the deceased.

9. The medical evidence shows that the deceased had suffered two injuries as follows:

- i) CLW of the size 3 to 4 cm lenier stab between 2nd and 3rd intercostal space on right side.
- ii) Right side over the ear 2 to 3 cm. going to temporal part and on lobule 0.5cm.
- iii) Aorta got ruptured and there was lot of blood in the chest.

10. This medical evidence supports the ocular evidence of PW-3. Even PW-1's evidence is important. The effect of the evidence of other two eye witnesses will have to be considered at the final hearing stage. At this stage, no case for bail is made out. However, the applicant is in custody since June 2018, therefore, hearing of the Appeal is expedited. The Applicant is at liberty to make an application for early hearing once the paper books are ready.

11. The Application is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)