

(2013) 02 BOM CK 0200

In the Bombay High Court

Case No : Bail Application (Appa) No. 36 of 2013 in Criminal Appeal No. 454 of 2012

Dilip Laxman Khandekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4380

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.G. Loney, for the Appellant; M.K. Pathan, Assistant Public Prosecutor, for the Respondent

Judgement

A.B. Chaudhari, J.—Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the rival parties. This is an application for suspension of sentence and grant of bail u/s 389 of the Code of Criminal Procedure. In support of the application, Mr. S.G. Loney, learned counsel for the appellant/applicant, submitted that the applicant was on bail during trial and there is no report whatsoever of he having misused the facility of bail that was extended to him during trial. He, then submitted that the applicant is original accused No. 7 against whom the only evidence that has come on record is that he was holding wooden stick. There is a vague evidence that the accused persons were beating the deceased and Ajay with wooden sticks but applicant No. 7 has not been specifically named. He then pointed out that the post-mortem report does not show a single injury due to stick. On the contrary, the post-mortem report and medical evidence shows that there were multiple stab injuries to the left lung. In the absence of any medical evidence, prima facie it cannot be believed that the applicant-accused had participated in the offence of murder in question. Thus, in the absence of specific evidence against the accused No. 7/ applicant-Dilip, it would be appropriate to allow him an order of bail during the pendency of the present criminal appeal.

2. Per contra, Mr. M.K. Pathan, learned A.P.P. for non applicant-State, opposed the application and argued that participation of the applicant in the unlawful assembly is very much proved and therefore, it cannot be said that the applicant is innocent particularly having been found guilty by the trial Court. We have considered the evidence of the witnesses who were examined in the trial court in support of charge of murder against the applicant also. The evidence of witnesses namely PW 5, PW 6 and PW 8 consistently show that accused No. 7/ applicant-Dilip was holding the stick. There is a general statement by all the witnesses that all the accused were beating the deceased and Ajay. Perusal of post-mortem report and the medical evidence however does not show single injury by means of stick but it shows stab injury due to which the death occurred. In the above background and looking to the pendency of criminal appeals in this Court, we are of the considered opinion that an order releasing the applicant on bail deserves to be passed. Hence, we make the following order.

ORDER

(i) The application is allowed.

(ii) During the pendency of Criminal Appeal No. 454/2012, the applicant-Dilip Laxman Khandekar (accused No. 7) is directed to be released on bail upon furnishing the personal bond in the sum of Rs. 20,000/- (Rs. Twenty Thousand Only) along with one surety in the like amount in the trial court.

(iii) The applicant shall not tamper with the prosecution witnesses and shall attend the Police Station concerned once in a month on the last Saturday of each month. He shall remain present before this Court at the time of final hearing of the appeal.

Rule made absolute in the above terms. No order as to costs.