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

**CRIMINAL APPLICATION NO.89 OF 2014
IN
CRIMINAL APPEAL NO.310 OF 2014**

Vijay @ Bapu Chimaji Bhutekar ... Applicant.
V/s.
The State of Maharashtra Respondent

**ALONGWITH
CRIMINAL APPEAL NO.83 OF 2014**

Pandit @ Baban Chimaji Bhutekar ... Appellant.
V/s.
The State of Maharashtra Respondent

**ALONGWITH
CRIMINAL APPEAL NO.554 OF 2014**

Arvind Ganpat Lavte ... Appellant.
V/s.
The State of Maharashtra Respondent

Mr. M. V. Holmagi, for Appellant in Application NO.89 of 2014
Mr. Abhaykumar Apte appointed advocate for the appellant in Appeal
No.554 of 2014
Mr. H.J. Dedhia, APP for the State.

**CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 4TH FEBRUARY, 2015.

P.C. :

1. By this application, the applicant-original accused No.2 seeks suspension of the substantive sentence of imprisonment and also seeks his enlargement on bail pending decision of appeal.

2. The applicant alongwith other accused has been convicted for the offences punishable under Sections 302 read with 34 and 506 (2) read with 34 of the Indian Penal Code, on the allegations that the applicant alongwith co-accused had committed murder of one deceased Sarver Khan on 7.11.2010 at about 7.00 p.m. The prosecution principally relied upon the evidence of P.W.1 Sayyed Ahmed Khan, who was the first informant, who had lodged report at Exh.24 . The prosecution also relied on the testimony of P.W.5 Wasim Juned Khan and P.W.13 Tabrak Hussain Khan, who were the eye witnesses to the incident. The prosecution also relied upon the circumstance that at the behest of the applicant, a sword stick was seized. The trial Court, thus, upon appreciation of the evidence, convicted and sentenced the applicant alongwith other co-accused.

3. We have heard Mr. Holmagi, learned counsel for the applicant, who has urged before us that no reliance can be placed on the testimony of the eye witnesses as eye witnesses are interested witnesses and the prosecution has not been able to establish the motive for the

commission of crime. The learned counsel for the applicant has also urged before us that the trial Court was in error in relying upon the discovery of the sword-stick at the behest of the applicant.

4. The learned APP has urged before us that in the light of overwhelming evidence of eye witnesses which implicate the applicant with infliction of blow of sword stick on the chest of the deceased, the applicant is not entitled to be released on bail as strong prima facie case is made out against the applicant.

5. The evidence of three witnesses in no uncertain terms establishes the complicity of the applicant. The submissions which have been urged before us by the learned counsel for the applicant pertain to re-appreciation of the evidence which cannot be done at this stage.

6. Suffice it to say that in the light of strong prima facie case against applicant, we are not inclined to suspend the substantive sentence of imprisonment and release the applicant on bail. It, however, appears that the applicant has undergone approximately 4½ years imprisonment and in the light of the matter, therefore, we expedite the hearing of the appeal. We accordingly direct the Registry to ensure that the paper book is received within three months from today and the appeal filed by the applicant alongwith companion appeals are added to the final hearing board at their appropriate place on the board. We, grant liberty to

the learned counsel for the applicant to urge for fixed date of hearing after the appeals are listed.

Application is accordingly dismissed with the aforesaid directions.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]