

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1076 OF 2017
WITH
CRIMINAL APPEAL NO.84 OF 2017**

Daulat Dhanaji Desai .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.P.K. Jain, Advocate h/f Mr. P.N. Jain, Advocate for
the applicant

Mr.K.S. Hoke Patil, APP for the respondent/State

CORAM : V.L. ACHLIYA, J.

DATED : 14.03.2017

P.C. :-

. The applicant has moved this application seeking suspension of sentence and release on bail during the pendency of the appeal on the grounds set out in detail in the memo of appeal.

2. Heard learned counsel for the applicant and APP for the respondent/State and further perused the record and proceedings.

3. In nutshell it is the contention of the learned counsel for the applicant that the conviction is not sustainable in law. There is no cogent, convincing and

reliable evidence to sustain the conviction. No independent witnesses were examined by the prosecution. The witnesses who have deposed against the applicant are interested witnesses. He further submits that even as per the case of the prosecution there was no motive on the part of the accused to commit murder. He submits that the incident was occurred all of sudden. He further submits that during the trial the applicant was on bail.

4. Learned APP has opposed the application with contention that there is a strong prima facie evidence to connect the applicant with the commission of offence. There were these eye witnesses who have deposed against the applicant. He submits that evidence on record clearly reflects that accused had knowledge of consequences of assault on the deceased. The accused assaulted the deceased over the head with wooden log which has resulted into linear fracture of skull. He, therefore, submits that the application be rejected.

5. On due consideration of submissions advanced in the light of prosecution case and evidence on record it prima facie reveals that there was no motive to assault deceased. As per the case set up by the prosecution the incident was occurred all of sudden and there was single blow dealt by the accused over the head. The deceased

died in hospital after four days of incident. On due of evidence the learned Additional Sessions Judge, Dhule has acquitted the accused from the charge under Section 302 of I.P.C. and convicted under Section 304 Part-I of the I.P.C. During the trial the applicant was on bail.

6. Having regard to the submissions advanced, over all facts of the case, I am of the view the case is made out to entertain the application seeking suspension of sentence and enlargement of applicant on bail during the pendency of the appeal. Hence the following order.

ORDER

I) Application is allowed.

II) Pending disposal of appeal the execution of substantive sentence awarded to the applicant stands suspended subject to deposit of fine.

III] Pending disposal of appeal the applicant namely Daulat Dhanji Desai be released on bail on his furnishing bail in the sum of Rs. 50,000/- with one surety in like amount on the following conditions.

- a) The applicant shall mark his attendance before the Pimpalner Police Station, Dist. Dhule on last day of each month in between 10.00 am to 11.00 am till final disposal of the appeal.
- b) The applicant shall furnish the names and addresses of his 3 close relatives with phone numbers.
- c) The applicant shall not cause threat to complainant and other prosecution witnesses.
- d) In the event of change in address the applicant shall intimate concerned Police Station as well as this Court.
- e) During pending of the appeal the applicant shall not involve in any criminal case.

IV) In the event of breach of any of the conditions, the bail granted to the applicant liable to be canceled.

V) Bail to be furnished before the trial Court. In case the bail is not furnished before the trial Court within two weeks from the date

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of this order, the order of suspension of sentence stands re-called and canceled.

VI) The trial Court is directed to report the compliance of furnishing of bail within three weeks to this Court.

VII) The Office In-Charge of the Pimpalner Police Station, Dist. Dhule is directed to submit the report of compliance of conditions of bail after every six months till final disposal of the appeal.

IX) Hearing of the appeal is expedited.

[V.L. ACHLIYA,J.]