

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 328 OF 2017
IN
CRIMINAL APPEAL NO. 746 OF 2016**

Popat Bhagwan Shelar ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Vikas Shivarkar, Advocate for the Applicant.
Ms.A.A.Takalkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 12th APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant / accused on bail during pendency of the appeal. The applicant / accused is accused No.3. He along with co-accused came to be convicted for the offence punishable under Section 304 read with Section 34 of the IPC by the learned Additional Sessions Judge, Baramati. The applicant / accused is sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo further simple imprisonment for 2 months.

2 Heard the learned advocate appearing for the applicant / accused. He argued that the applicant / accused is brother of original accused no.2 Somnath. The incident allegedly took place in the house of Somnath and not in the house of applicant / accused. The learned advocate further argued that except PW1 Ajit (son of deceased) and PW11 Aruna (wife of deceased) other prosecution witnesses have not supported the case of the prosecution. The learned trial court has also held that motive is not proved. The sentence imposed is only of 7 years and the appeal may take its own time for hearing. With this, the learned advocate appearing for the applicant / accused prayed that the applicant / accused be released on bail during pendency of the appeal. It is further argued that the applicant had already served jail sentence of about three years up till now.

3 The learned APP opposed the application by contending that the evidence of PW1 Ajit and PW11 Aruna is cogent and trustworthy. The deceased was done to death in the house of accused no.2 Somnath by the present applicant and other co-accused. As such, he is not entitled for bail.

4 I have carefully considered the rival submissions and also perused the record made available including deposition of witnesses as well as police statements.

5 According to the prosecution case, as reflected from the police statement of PW8 Sunita, she had developed love relations with deceased Dadasaheb Shelar. PW8 Sunita is wife of accused no.2 Somnath. She reported to the Investigator that on 24th May 2014, at about 12.00 in the midnight, Dadasaheb Shelar (since deceased) came to her house and they indulged in sexual relations. At that time, accused persons came there and assaulted Dadasaheb Shelar causing death of Dadasaheb Shelar.

6 Evidence of PW1 Ajit and PW11 Aruna is to the effect that on getting a call from residents of the village, they both had been to the house of accused no.2 Somnath. They saw Dadasaheb Shelar lying dead in the house of accused no.2 Somnath with injuries on his person.

7 Evidence of PW1 Ajit shows that the applicant / accused was present on the spot and it was accused no.1 Bhagwan who extended a threat to him. Even PW11 Aruna is stating presence of applicant / accused on the spot.

8 It is seen that, after due trial, the learned trial court came to the conclusion that motive is not proved by the prosecution. Similarly, it is held that the offence punishable under Section 302 of the IPC is also not proved by the prosecution. Ultimately, the applicant / accused along with co-accused has

been convicted of the offences punishable under Section 304 of the IPC.

9 The applicant has also reported to have undergone sentence of about three years.

10 Considering the quantum of sentence imposed upon the applicant / accused as well as the fact that he was stated to be present at the spot which is the house of his brother, I am of the considered opinion that, as the appeal will take its own time for disposal, liberty of the applicant / accused needs to be restored to him, and therefore, the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and the applicant / accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) As a condition of this order, the applicant / accused should not contact family members of deceased Dadasaheb Shelar in any manner and he should not extend any threat, promise or inducement to them.

(A.M.BADAR J.)