

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

**CRIMINAL APPLICATION NO.123 OF 2018
IN
CRIMINAL APPEAL NO.977 OF 2014**

Bharat Kaluram Ghanchi @ Ghelot	..Applicant
Versus	
The State of Maharashtra	..Respondent

**Mr. Daulat G. Khamkar, Advocate for the Applicant.
Mr. H. J. Dedhia, APP for the Respondent - State.**

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 28th JUNE, 2018**

P.C.

1] This is an application for suspension of sentence and grant of bail during pendency of the Appeal.

2] The Applicant has been convicted for the offence punishable under Section 302 r/w 34 as well as 380 r/w 34 of the Indian Penal Code ("IPC" for short). For the offence under Section 302, he has been sentenced to suffer life imprisonment, whereas under Section 380, he has been sentenced to suffer rigorous imprisonment for five years.

3] Learned Trial Judge in paragraph 41 has clearly stated that when the death of the deceased had occurred, only Accused No.2 had assaulted the deceased. It is further stated that even the Accused *BGP*.

No.1 was not present at the time of incident. It is however stated that because of plan of the Accused No.1 to commit theft with all consequences, he is guilty under section 34 of the IPC.

4] We are prima-facie of the view that conviction under Section 302 of the IPC in the light of the evidence led by the prosecution would not be tenable in so far as the present Applicant is concerned.

5] Even if the conviction of the Applicant for the offence punishable under Section 380 of the IPC is maintained, at the most he would be liable to suffer rigorous imprisonment, which may extend to maximum seven years. He is already in custody for more than seven years.

6] In that view of the matter, we are inclined to allow the application. The order of sentence for the offence punishable under Section 302 of the IPC shall stand suspended. The Applicant is directed to be released on bail on furnishing bail bonds in the sum of Rs.10,000/- with one or more sureties in the like amount.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]