

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

**CRIMINAL APPLICATION NO.1046 OF 2017
IN
CRIMINAL APPEAL NO.689 OF 2017**

Mohammad Riyaz Bhikki Khan Mansuri @
Raju @ Chandbabu

.... Applicant

versus

The State of Maharashtra

... Respondent

.....

- Mr.Prashant G. Pandey, Advocate for the Applicant.
- Mr.V.V. Gangurde, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 06th AUGUST, 2018.**

P.C. :

1. This is an Application on behalf of accused No.1 for suspension of conviction and grant of bail during the pendency of the Appeal.

2. It is the prosecution case that the accused had committed murder of Smt.Anthonita E.M. Mellocastro and

Smt. Petty Vargis. At the conclusion of the trial, the learned trial Judge vide Judgment and Order dated 06/04/2013 convicted the Appellant for the offence punishable under Part I of Section 304 of IPC and was sentenced to suffer rigorous imprisonment for 10 years. The Appellant has challenged the same before this Court. The learned Single Judge of this Court vide the Judgment and Order dated 12/02/2015 in Criminal Appeal No.509/13 remanded the matter with certain directions. After remand the learned Trial Judge has convicted the Appellant, vide Judgment and Order dated 28/12/2016, for the offence punishable u/s 302 of IPC. It appears that while passing the order of conviction u/s section 302 of IPC, the learned trial Judge has basically relied on the evidence of P.W.14 Dr. Pratap Daya Anand with regard to extra judicial confession given by the accused.

3. The Appellant has already undergone custody for more than 9 years. Prima facie it appears that the finding of the learned Trial Judge, which convicted the Appellant for the offence punishable under Part I of section 304 of IPC appears to

be more probable than the subsequent conviction under section 302 of IPC. Of course, this is without prejudice to the right of the Appellant to challenge the order of conviction.

4. If the conviction is for Part I of section 304, then the sentence that would be normally imposed would be of rigorous imprisonment for 7 years. The Appellant has already undergone 8 years and 8 months of imprisonment.
5. Taking into consideration this aspect of the matter, the Application deserves to be allowed.
6. The order of sentence shall stand suspended. The Applicant is directed to be released on bail on furnishing his bail bond in the sum of Rs.15,000/- with one or more sureties in the like amount.
7. The Applicant shall report to Malwani Police Station, on the 1st of every month.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)