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

**CRIMINAL APPLICATION NO.2033 OF 2018
IN
CRIMINAL APPEAL NO.1502 OF 2018**

Avinash Suryakant Thenge

..Applicant

Vs

The State of Maharashtra

..Respondent

Mr. Anil S. Shitole for Applicant.

Mr. J.P. Yagnik, APP for Respondent-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 22nd January 2019.

P.C.:

1] This an Application for suspension of sentence and releasing the applicant on bail.

2] Heard the learned counsel for the applicant and the learned APP. Perused the record.

3] The applicant is convicted under section 302 of the Indian Penal Code by the learned Additional Sessions Judge, Pune in Sessions Case No.981 of 2013 by its Judgment and Order dated 27th November 2018.

It is the prosecution case that, due to earlier enmity the applicant along with the accused No.2 Sagar Shinde and other two accused (juvenile in conflict with law) conspired to commit murder of Somnath Vare. Accordingly, on 11th September 2013 at about 7.00 p.m, Sagar Shinde (accused No.2) and the applicant called Somnath Vare to accompany them and Sagar Shinde took Somnath Vare on his motorcycle from his house to some other place. The concerned Police Station received anonymous call on 12th September 2013 at about 11.30 a.m. that the dead body of Somnath Vare was found. The dead body of Somnath Vare was found near an under-construction site near Spicer College. During the course of investigation, the police arrested the applicant on 12th September 2013.

4] The learned Additional Sessions Judge, Pune by its Judgment and Order dated 27th November 2018 convicted the applicant for the offence punishable under Section 302 of the Indian Penal Code and acquitted the co-accused Sagar Shinde from the said charge.

5] The evidence on record indicates that, three witnesses viz. PW Nos.1,3 and 6 saw Somnath Vare going from his house on the motorcycle of Sagar Shinde as a pillion-rider. Three accused including the applicant followed the motorcycle. As noted earlier, Sagar Shinde (accused No.2) in

whose company Somnath Vare was actually seen lastly by the witnesses has been acquitted by the Trial Court. It is further to be noted here that, though the clothes of the applicant having blood-stains on it alleged to have been recovered in the presence of panch-witness under Section 27 of the Indian Evidence Act, the prosecution has failed to bring on record the blood group of the applicant.

6] It is further to be noted here that, the applicant is in jail since last five and half years. The learned counsel for the applicant submitted that, as per his instructions there are no antecedents at the discredit of the applicant. The possibility of hearing of the present appeal in near future is remote.

7] In view of the above, we are of the view that the applicant can be released on bail.

Hence, the following Order:-

(a) Applicant shall be released on bail in Sessions Case No.981 of 2013 on his furnishing PR bond in the sum of Rs..25,000/- with one or two solvent local sureties in the like amount;

(b) After his release from jail, the applicant shall attend the Trial Court on every first Monday of the months of January, April, August and

December till final hearing of the appeal;

(c) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)