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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 CRIMINAL APPLICATION NO.828 OF 2021
IN
CRIMINAL APPEAL NO. 179 OF 2021

ARUN HARIBHAU TUPE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent : Mr. Shashibhushan P. Deshmukh
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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 9th AUGUST, 2021**

PER COURT:-

1. Heard.
2. Pending criminal appeal No. 179 of 2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 04.03.2021 in Sessions Case No. 254 of 2018, convicting thereby the applicant-accused for the offences punishable under Sections 302, 324 and 452 of I.P.C. and sentencing him to undergo imprisonment for life and to pay fine of Rs.10,000/- i/d R.I. for six months under Section 302 of IPC, to undergo R.I. for three months and to pay fine of Rs.5,000/- i/d R.I. for one month under Section 324 of IPC and to undergo R.I. for three months and to pay fine of Rs.5,000/- i/d R.I. for one month under Section 452 of IPC, the applicant has filed this criminal application for suspension of substantive part of the sentence and for bail.

3. Learned counsel for the applicant submits that the prosecution mainly relies upon the evidence of witness P.W.4 Sanjay Painter. Learned counsel submits that P.W.4 Sanjay Painter was the prime suspect. However, on his statement, the applicant alone came to be arraigned as an accused in connection with the crime and further on the evidence of P.W.4 Sanjay Painter alone, the trial court has convicted the applicant-accused. Learned counsel submits that the evidence of P.W.4 Sanjay Painter is not trustworthy, reliable and inspiring confidence. His conduct pre-incident and post-incident is highly suspicious. Learned counsel submits that P.W.2 Padma Keshav Jarhad (wife of deceased) has also not disclosed until 28.7.2018 that on the date of incident at 5.45 p.m. the applicant-accused took away her husband on his motor cycle. Learned counsel submits that her said admission in cross- examination has weakened the prosecution case even if considered on the basis of circumstantial evidence in the form of last seen together.

4. Learned A.P.P. submits that the evidence of P.W.4 Sanjay Painter is cogent, reliable and trustworthy. He is the eye witness to the incident. He is injured witness. The applicant-accused has assaulted him and thereafter committed murder of deceased Keshav, which he has witnessed. Learned A.P.P. submits that there is evidence that deceased Keshav was lastly seen alive in the company of the applicant-accused. Learned A.P.P. submits that P.W.4 Sanjay

Painter was the prime suspect for the reason that wife of deceased, P.W.2 Padma Jarhad, who is not an eye witness to the incident, had disclosed his name and further, the applicant-accused had also mislead her and the informant about involvement of witness Sanjay Painter in the alleged commission of crime. Learned A.P.P. submits that during trial, the applicant-accused was not on bail. His application is liable to be rejected.

5. We have carefully gone through the prosecution evidence, particularly the evidence of P.W.4 Sanjay Painter and P.W.1 Pramod Jarhad. P.W.1 Pramod Jarhad, who is nephew of deceased Keshav, went to the spot when informed about the incident by the applicant-accused on phone. The applicant-accused had informed him that P.W.4 Sanjay Painter has given a blow of knife to deceased Keshav. Further, the applicant-accused took the informant P.W.1 Pramod to the place of incident. P.W.1 Pramod, on reaching to the spot, found the dead body of Keshav lying on the surface at downward position having sustained bleeding injuries. At the right side of the dead body, one stone stained with blood was also found. P.W.1 Pramod has further deposed that the dwelling house of Sanjay Painter is 200 feet from the spot and he was sitting outside his house. As soon as Sanjay Painter saw them, he rushed into the home. They followed him. When they reached there, they found him lying in an injured condition. They inquired to him, however, he did not answer. We need to refer the medical examination certificate of P.W.4 Sanjay

Painter. P.W.4 Sanjay Painter was having simple injuries not on the vital parts of his body. P.W.4 Sanjay Painter has further denied in his cross-examination that P.W.1 Pramod and the applicant-accused had come to his house. It is his case that the knife by which he was assaulted, the same knife was used by the applicant-accused while assaulting Keshav. It is thus difficult to believe that as per the prosecution case, P.W.4 Sanjay Painter was alone on the spot of the incident and if he had an opportunity to witness the entire incident and if he was also assaulted by the applicant-accused for that purpose, then, it is very unlikely on the part of the applicant-accused to spare him by keeping him as witness to the incident of murdering deceased Keshav on the spot. *Prima facie*, the pre-incident and post-incident conduct of P.W.4 Sanjay Painter appears to be doubtful. P.W.4 Sanjay Painter has deposed that he witnessed the incident by sitting in the front portion of the platform of his house. However, in cross examination, he has admitted that the tree, below which the dead body of Keshav was lying, is behind his house.

6. P.W.2 Padma Keshav Jarhad is the wife of deceased. According to her evidence, on 23.07.2018 at about 5.45 p.m., when they were returning to the house from the field, the applicant-accused came on his motor cycle and took with him the deceased Keshav for a drive. As per P.W.2 Padma, the incident had taken place on 23.07.2018 at about 5.45 p.m. However, in para 7 of her cross-examination, P.W.2 Padma has admitted that she had not disclosed

to anyone uptill 28.7.2018 that the applicant-accused took away her husband on his motor cycle.

7. So far as the recovery of knife shown to have been at the instance of the applicant-accused is concerned, P.W.3 Dattatraya Ghumare in para 3 of his cross-examination has admitted that on 10.08.2018, when API Rakshe called him at 10.00 am, at that time, API Rakshe informed him that they will have to go to Chichondi for making panchanama of seizure of knife. Even they had a talk for 15 minutes in respect of the crime and also the manner for recovering the knife. It thus appears that A.P.I. Rakshe had knowledge about the weapon knife and the place where it was kept. Thus, the important aspect of disclosure by the applicant-accused for recovery of the knife loses its significance.

8. Thus considering the entire aspect of the case, we are inclined to release the applicant on bail by suspending the substantive part of sentence. Hence, we proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed.
- II. Pending the criminal appeal No. 179 of 2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar, dated 04.03.2021 in Sessions Case No. 254 of 2018, the substantive part of the sentence is

hereby suspended and till then the applicant Arun Haribhau Tupe be released on bail on furnishing P.B. of Rs.25,000/- (Twenty five thousand) with one solvent surety of the like amount.

III. Criminal application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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