

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

**INTERIM APPLICATION NO.2050 OF 2021
IN
CRIMINAL APPEAL NO.459 OF 2021**

Sudhir Laxman Bote ...Applicant
V/s.
The State of Maharashtra ...Respondent

Mr.Satyavrat Joshi for the Applicant.
Mrs.P.P. Shinde, APP, for the Respondent-State.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 31 August 2021

P.C.

. By this Application, the Applicant Sudhir Bote (Accused No.2) is seeking an order of suspension of sentence and release on bail. The Applicant along with Satappa Pundalik Nartawadekar (Accused No.1) was tried for the offence punishable under Section 302 and 326 read with Section 34 of the Indian Penal Code ('IPC' for short) before the learned Sessions Judge at Kolhpaur in Sessions Case No.100 of 2017.

2. The prosecution case is that the Applicant and the co-accused, in furtherance of their common intention had

intentionally caused the death of Keraba Bote the husband of PW-2 Chayya Bote.

3. The learned Sessions Judge by the impugned judgment and order dated 1 April 2021 has convicted the Applicant and the co-accused for the offence under Section 302 and 324 read with Section 34 of the Indian Penal Code. For the offence under Section 302 of the IPC the Applicant and the co-accused have been sentenced to suffer imprisonment for life along with fine, while under Section 324 they have been sentenced to suffer rigorous imprisonment for one year along with fine.

4. We have heard the learned counsel for the Applicant and the learned APP. Perused record.

5. The deceased and the Applicant have their agricultural lands adjacent to each other at Village Hasur Budruk, Taluka-Kagal, District-Kolhapur. The incident in question happened on 14 April 2017. The deceased along with his wife PW-2 Chayya Bote had gone to their field and found that while ploughing the soil from the field of the Applicant/Accused had fallen on the land of the deceased. It is said that while returning from the field the deceased asked the Accused as to whether they want to take away the soil or else it would be spread over the field

of the deceased. Upon this the Applicant got angry and pelted lump of earth and stones on the person of the deceased and the informant and it is alleged that the Applicant assaulted the deceased on his right forearm with a scythe. The Accused No.1 assaulted the deceased on the head, as a result of which the deceased Keraba Bote sustained injuries to which he subsequently succumbed. Upon a report lodged by PW-2 Chayya Bote an offence came to be registered initially under section 326 which was subsequently converted to Section 302 of IPC upon death of Kerba Bote.

6. Upon hearing the learned counsel for the parties and perusal of the record we *prima facie* find that the incident happened in front of the house of the Applicant when the deceased had asked the Accused about soil lying in his field. Insofar as the present Applicant is concerned the allegation is that he had assaulted the deceased by a scythe on his hand.

7. The learned counsel for the Applicant pointed out that there are no circumstances to indicate that there was any premeditation or a concert between the two accused to assault or to cause the death of Keraba. He submitted that the circumstances indicate that at the highest the incident had happened on the spur of the moment and the assault by the Applicant on the hand does not indicate any intention to cause

the death of Keraba Bote. The learned counsel in this regard pointed out the evidence about cause of death. It is pointed out that the Applicant was on bail during the course of the trial, which was granted by this Court by order dated 4 December 2017 in Bail Application No.2627 of 2017.

8. It is also pointed out that in her evidence PW-2 Chayya Bote has stated about an incident which had happened in the field in which also there was pelting of stone on husband of PW-2 and he had become unconscious.

9. Considering the overall circumstances and *prima faice* having regard to the fact that the allegation insofar as the present Application is concerned, is about an assault on the hand and further having regard to the submission that incident had happened on the spur of the moment and fact that the Applicant was on bail during the course of the trial, we find that the sentence can be suspended.

10. In the result the following order is passed.

ORDER

(i) The substantive sentence awarded to the Applicant/Accused Sudhir Laxman Bote, is hereby suspended pending disposal of the Appeal.

(ii) The Applicant Sudhir Laxman Bote, shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Sessions Judge.

(iii) The Criminal Application is disposed of in the aforesaid terms.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)