

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

**INTERIM APPLICATION NO. 253 OF 2021
IN
CRIMINAL APPEAL NO. 1276 OF 2019**

Sukdeo Madan Kadu ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr. Aniket U. Nikam a/w. Mr. Aashish Satpute a/w. Mr. Amit R. Icham a/w. Mr. Piyush Toshnival i/b. Mr. Vivek N. Arote, for the Applicant.

Ms. Prajakta Shinde, APP for the Respondent / State.

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

DATE : 17 August 2021

P.C.

. This is an Application for suspension of sentence and for release of the Applicant on bail during the pendency of the Appeal.

2. The Applicant is Accused No.1 in Special Case (Atrocity No.14/2013) tried by the learned Sessions Judge at Nashik. The learned Sessions Judge convicted the Accused for offences

punishable under Section 302, 452, 427, 504 and 506 r/w. 34 of IPC.

3. The case of the prosecution in short is that on 20 May 2012, Accused came to the house of the deceased Gorakh with deadly weapons with an intention to assault his son. At that time, the informant-the wife of deceased and his daughter were present. When the deceased trying to stop the Accused, Accused assaulted the deceased by an axe, iron rods and wooden sticks. Gorakh succumbed to injuries.

4. The learned counsel for the Appellant submitted that Accused No.2 and Accused No.4 have been released on bail by this Court by order dated 29 October 2020 and 3/12/2019. He submitted that Appellant did not have any intention to assault deceased Gorakh as, as per the prosecution case itself the Accused were inquiring about the presence of Dinesh, the son of deceased, and that only a single blow of axe on head is stated to be given. Learned counsel submitted that the eye witnesses have deposed that the sharp side of the axe was used, however, the deposition of the Medical Officer shows that the injuries found on the dead body do not correspond to use of sharp side of axe.

5. Learned APP submitted that the evidence of eye witnesses is consistent and cannot be discarded at this stage only on the

grounds as urged. The learned APP submitted that the role of those accused which have been granted bail is different.

6. As regard the issue of parity is concerned, perusal of the orders passed by this Court in respect of the Accused Nos.2 and 4 shows that their role was different, and it is the Applicant who has used an axe. The Applicant was armed with axe and went to the house of the deceased and it cannot be said that there was no intention. The evidence of the eye witnesses that blow was given by an axe on the head correspond to the evidence of the Medical Officer that head injury was the cause of the death. Learned counsel for the Applicant then submitted that the Applicant was on bail during the trial and has not misused his liberty. However, considering the fact that the Applicant is convicted and looking at the evidence *prima facie*, we do not find that case for grant of bail is made out, the Application is rejected.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)