

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

**INTERIM APPLICATION NO. 703 OF 2021
IN
CRIMINAL APPEAL NO.178 OF 2021**

Roshan Jaywant Pagare

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Vivek Salunke a/w Mr. Vivek M. Punjabi i/b Mr. Ajinkya J. Jaibhave for the Applicant.

Mrs. P. P. Shinde, APP for the Respondent.

**CORAM : NITIN JAMDAR AND
G. A. SANAP, JJ.**

DATE : 7 SEPTEMBER 2021

P.C.

This application is for suspension of sentence and for release of the Applicant-Original Accused No.4 on bail pending hearing of the Criminal Appeal. The Applicant along with Accused Nos.1 to 3, 5 to 8 were charged for the offences as above for committing murder of Nikhil More on 17 August 2017.

2. By the judgment and order dated 10 November 2020, the learned Sessions Judge, Nashik in Sessions Case No.141 of 2018 convicted the Applicant for the offence punishable under Section 302 read with Sections 149, 143, 147,

148, 324 of the Indian Penal Code and sentenced the Applicant to suffer rigorous imprisonment for life.

3. According to the prosecution the Applicant along with other accused assaulted Nikhil and the Applicant gave blows of chopper on body of Nikhil and the other accused used deadly weapon. Witnesses who were present tried to save Nikhil and they were also assaulted and were injured. The prosecution have examined PW-4-Suraj and PW-5-Amol. They have deposed that at around 10.00 p.m. when they were sitting with deceased Nikhil on staircase of the shop after taking dinner, accused arrived there. Accused No.6 has threatened Nikhil citing the past incident of instigating the assault on accused No.1, accused No.6 gave 2-3 blows of sickle on the head of Nikhil. Accused No.3 fired one or two rounds by gun in the air and PW-4-Suraj and PW-5-Amol went aside. Accused No.1 used sickle. Accused No.5 and the Applicant used chopper on Nikhil's stomach and his body. Accused No.1 assaulted PW-4-Suraj on his right arm. PW-6-Sachin and Ajay Pawar then started throwing stones towards accused No.6 and others. Then accused No.6 chased PW-4-Suraj, PW-5-Amol and PW-6-Sachin who ran away. PW-4-Suraj, PW-5-Amol PW-6-Sachin later returned to the spot and took Nikhil More to the hospital where he succumbed to his injuries. Post mortem was conducted. After completion of investigation charge-sheet was filed. The case was committed to the Sessions

Court. The prosecution has examined twenty witnesses and relied upon various documents.

4. We have heard Mr. Vivek Salunke, learned Counsel for the Applicant and Mrs. P. P. Shinde, learned Additional Public Prosecutor.

5. The learned Counsel for the Applicant contended that there are contradictions and omissions in the evidence of witnesses, more particularly as regards the role of the present Applicant. He submitted that the eyewitnesses have given different versions and there is a doubt created as to veracity of their evidence as to the role of the Applicant. Learned Counsel for the Applicant contended that PW-4-Suraj had admitted that he had not mentioned in his statement under Section 164 of the Criminal Procedure Code, 1973 that the Applicant had given chopper blow on the stomach of Nikhil More. The learned Counsel contended that the evidence of PW-4-Suraj is clearly not reliable. PW-5-Amol also received injuries. At this stage the evidence of these eye witnesses cannot be disbelieved. In the statement under Section 164 of the Criminal Procedure Code, 1973 PW-5-Amol has stated that Amar Gangurde and the Applicant had came to the spot. Amar Gangurde had assaulted him with chopper. PW-6-Sachin also saw that the Applicant along with others assaulting the deceased. Post mortem report shows

that the deceased had multiple stab wounds, direction of wounds were backwards and downwards. The death was due to combined effect of multiple stab injuries on chest, abdomen and firearm injury in the abdomen. Learned Counsel for the Applicant sought to contend that the witnesses have given interviews to media wherein different versions were given which cast doubt about their credibility. The primary evidence is the evidence given on oath in the Court.

6. As regard the delay in lodging the FIR, the eyewitnesses had suffered injuries and because of injuries were in shock due to brutal attack on Nikhil.

7. Considering these circumstances, we do not find that the case for grant of bail is made out. The Application is accordingly rejected.

(G. A. SANAP, J.)

(NITIN JAMDAR, J.)

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