

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1166 OF 2021  
IN  
CRIMINAL APPEAL NO.317 OF 2021**

|                                       |    |            |
|---------------------------------------|----|------------|
| Santosh Ramrut Sharma                 | .. | Applicant  |
| v/s.                                  |    |            |
| The State of Maharashtra              | .. | Respondent |
| ....                                  |    |            |
| Mr. Nadeem Shaikh, for the Applicant. |    |            |
| Mrs. M.M. Deshmukh, APP, for State.   |    |            |
| ....                                  |    |            |

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

**DATE : 7 SEPTEMBER 2021.**

**P.C:-**

This is an application for suspension of sentence and grant of bail pending the appeal.

2. By the judgment and order dated 20 February 2021, passed by the Additional Sessions Judge, Thane, the Appellant is convicted under Section 302 of Indian Penal Code and is sentenced to suffer rigorous imprisonment for life. The Appellant is also convicted

under Section 363 and Section 201 of the Penal Code.

3. The prosecution case is that the Appellant/Accused kidnapped the minor son, aged 7 years of P.W.1 and committed his murder. Prosecution examined 10 witnesses. P.W.1 and 2 are the parents of the deceased minor. P.W.3 is the brother of the deceased. P.W.6 and P.W.8 are the residents of the locality. Evidence of P.W.1, 2 and 3 is that the accused was known to the family of the deceased minor. The deceased minor, along with his brother P.W.3, had gone to the neighbour for watching television on 11 November 2016, when the Appellant/Accused allured the deceased minor on the pretext of giving him some snacks. Thereafter, the minor went missing. FIR was lodged on 12 November 2016. P.W.1, the mother, received a phone call from the Appellant that if she comes to meet him at particular spot, the child would be handed over. When P.W.1 went to the spot, the accused seeing her and the police ran away. P.W.1 also deposed to the motive as the Appellant was demanding sexual favours from P.W.1 and the deceased child was in impediment. After the phone calls were received on 17 November 2016, supplementary FIR was lodged on 18 November 2016 and the Appellant was arrested. The Appellant led the police party to the room in an isolated area where the dead body and the weapon, iron bar, were buried inside the room. Based on the evidence of last seen together, motive, recovery and the medical evidence, conviction was recorded against the Appellant.

4. As regards the aspect of Last Seen Together, learned Counsel for the Applicant submitted that P.W.6-the neighbour, in whose house the deceased child had gone to see television, has not supported the prosecution case. P.W.6, however, has not stated that P.W.3-brother of the deceased did not come to see the television and had deposed that children used to come to his house to watch television. P.W.3 deposed that the Appellant had taken away the deceased minor on the pretext of giving him snacks. Learned Counsel for the Applicant sought to point out contradictions in the evidence of this child witness P.W.3. However, reading the evidence of P.W.3 in totality, we do not find any case at this stage to disbelieve his version. P.W.8 had also deposed that she had seen the Appellant and the deceased minor together on the same date and time.

5. The version of the mother-P.W.1 that the Appellant made phone calls to her is sought to be criticised by learned Counsel for the Appellant on the ground that the records of phone calls have not been brought on record. However, at this stage, we do not find any reason to disbelieve her version and it is after the phone calls were received, in a supplementary FIR the Appellant was named. Through her version, the prosecution has brought the motive on record.

6. As regards the recovery of the dead body and the weapon at the instance of the Appellant, the learned Counsel for the Applicant

submitted that it is not believable that recovery of the dead body found buried from the dwelling house of the Appellant could have been made and, even otherwise, as per the prosecution, the door of the room was open. Panchnama and the deposition of the panch witnesses shows that the room was in isolated area and nothing has been demonstrated before us by the learned Counsel for the Applicant that this room was the one in which the Appellant was residing. Learned APP submitted whether the room belonged to the Applicant or otherwise, is not a matter of significance at the stage of consideration for bail as the factum of recovery at the instance of the Applicant where the dead body and the weapons were buried cannot be discredited.

7. Therefore, considering the prosecution evidence, prima facie, we do not find that case for suspension of the sentence and grant of bail made out.

8. The application is, accordingly, rejected.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)