

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

INTERIM APPLICATION NO. 1475 OF 2021

IN

CRIMINAL APPEAL NO. 855 OF 2019

ALONG WITH

CRIMINAL APPEAL NO. 855 OF 2019

Bhupat Antu Vinodia

...Appellant

Versus

The State of Maharashtra

...Respondents

...

Mr. Abhishek R. Avachat for Applicant/appellant.

Ms. G.P. Mulekar, APP for State.

...

**CORAM : S. S. SHINDE &
S. P. TAVADE, JJ.**

DATE : 15th NOVEMBER, 2021.

P.C.:

1. Heard the learned counsel appearing for the applicant and learned APP for State.

2. Learned counsel for the applicant submits that the applicant had no intention to cause the death of the victim. In fact the victim suddenly came at the spot of incident and intervened. It is submitted that there was no intention or motive for causing such bodily injuries. It is submitted that, without admitting, but

assuming that the death was caused due to the injuries inflicted by the the applicant, even then the case of applicant would be covered under Section 304 (II) of the IPC. It is submitted that the doctor who initially treated the victim was not examined by the prosecution. It is submitted that the prosecution claimed that the Ms. Rashila Waghela (PW1), Mr. Suresh Waghela (PW2) and Mr. Ravi Waghela (PW6) have witnessed the incident, however, upon careful consideration of entire evidence, their presence at the spot of incident at the relevant date and time is not proved. Therefore, the learned counsel for the applicant submits that during the pendency of the appeal the applicant deserves to be enlarged on bail thereby suspending sentence awarded to him by the trial Court.

3. On the other hand, the learned APP appearing for State invited our attention to the evidence of Ms. Rashila Waghela (PW1), Mr. Suresh Waghela (PW2) and Mr. Ravi Waghela (PW6) and submits that, if the deposition of aforesaid witnesses are read in its entirety, there is no slightest doubt that the applicant-appellant was the assailant and by giving repeated blows by knife multiple injuries were caused on the vital part of the body of the victim. Therefore, on the face of it, the intention of the applicant to kill the victim was writ large.

4. We have appreciated the rival contentions only for the purpose of deciding the application for suspension of sentence filed by the applicant. Upon considering the evidence in its entirety and in particular evidence of Ms. Rashila Waghela (PW1), Mr. Suresh Waghela (PW2) and Mr. Ravi Waghela (PW6), so also medical evidence and the fact that the applicant had given more than one blow to the victim, *prima facie* the findings recorded by the trial Court cannot be said to be perverse. Since an appeal filed by the applicant is pending for consideration, we refrain from making elaborate comments on merits. In that view of the matter, this is not a fit case to suspend the sentence and enlarge the applicant on bail. Hence, the application stands rejected.

5. The hearing of the appeal stands expedited, however, subject to time constraint and convenience of this Court. List the appeal for hearing on 7th December, 2021.

6. The observations made herein above are *prima facie* in nature and restricted only to the adjudication of the present application.

(S. P. TAVADE, J.)

(S. S. SHINDE, J.)