

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1967 OF 2021

IN

CRIMINAL APPEAL NO.646 OF 2021

Sunil Tukaram Mane .. Applicant/Appellant
(Original Accused in S.C. No.122/2018)

v/s.

The State of Maharashtra .. Respondent
(Original Complainant)

....

Mr. Sandeep Mishra, for the Applicant.

Mrs. M.M. Deshmukh, APP, for State.

....

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

DATE : 21 SEPTEMBER 2021.

P.C:-

The Appellant has made this application for bail in the Criminal Appeal No.646 of 2021. The Appellant has been convicted by the Sessions Judge, Thane for the offence punishable under Section 302 of IPC and sentenced to suffer life imprisonment and to pay fine of Rs.1000/- and in default to suffer S.I. for one month vide order dated 28 May 2021.

2. The Appellant was tried for committing the murder of his brother Akshay on 12 October 2017. The grounds of challenge to the impugned judgment and order have been set out in the memo of appeal. In the bail application, it is the case of the Appellant that there is no iota of evidence to prove the charge against him. The Sessions Judge, according to the Appellant, has convicted him by drawing inferences on the irrelevant facts and circumstances. The mother of the Appellant is the informant. In the report lodged by her, she has stated that the deceased Appellant, she herself and her husband were staying together. The deceased was addicted to liquor. The deceased would make demand of money to satisfy his thirst for liquor. On the date of the incident, the deceased demanded Rs.500/- from the informant. She refused to pay the same. The deceased abused her. After some time, he came back in drunken condition and started abusing them. He abused the Appellant. It is the case of the prosecution that the Appellant lost his control and inflicted a blow on the head of the deceased with wooden log. The deceased sustained serious injuries and he ultimately succumbed to the same.

3. The Sessions Judge, on going through the evidence led by the prosecution, found the said evidence convincing and reliable to accept the case of the prosecution. Learned Advocate for the Appellant submitted that the evidence is not at all sufficient to prove the guilt of the Appellant beyond reasonable doubt. The learned Advocate took us

through the reasons recorded by the learned Sessions Judge, based on the evidence adduced by the prosecution. The learned Advocate submitted that on the basis of such a shakey and unreliable evidence, the Appellant could not have been convicted and sentenced as above. The learned Advocate submitted that no purpose would be served by keeping the accused behind the bars. The learned APP, on the basis of the evidence, submitted that the same is sufficient to accept the case of the prosecution.

4. We have given thoughtful consideration to the submission. We have also gone through the material evidence and the judgment passed by the Sessions Judge. It is apparent on the face of record that the case of the prosecution is based on circumstantial evidence of the neighbour seeing the Accused/ entering the house with blood stained clothes. The C.A. report relied upon by the prosecution, in our opinion, would be of no help to the prosecution in as much as the blood test was inconclusive. In our opinion, considering the facts and circumstances, it would not be proper to keep the accused behind the bars during the pendency of the appeal. The appeal is also not likely to be taken up for hearing immediately. We are of the opinion that the Appellant has made out a case for releasing him on bail.

5. Hence following order:

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant by the Sessions Judge, vide judgment and order dated 28 May 2021 in Sessions Case No.122 of 2018 is hereby suspended.
- (iii) The Appellant/Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- and surety in the like amount forthwith, if not required in any other crime.
- (iv) The Criminal Application stands disposed of.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)