

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

**CRIMINAL APPLICATION NO. 2476 OF 2021  
IN  
CRIMINAL APPEAL NO. 519 OF 2021**

Fazal Sikandar Patel

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....  
Mr. S.S. Jadhav, Advocate for applicant  
Mr. S.P. Deshmukh, A.P.P. for respondent - State  
....

**CORAM : R.G. AVACHAT AND  
R.M. JOSHI, JJ  
DATE : 21<sup>st</sup> DECEMBER, 2022**

**PER COURT :**

1. This is an application for suspension of substantive sentence of imprisonment passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No. 300 of 2013 vide judgment and order dated 16<sup>th</sup> September, 2021. The applicant has been convicted for the offence punishable under Section 302 of the Indian Penal Code (I.P.C.) and therefore, sentenced to suffer life imprisonment and to pay fine of Rs.5,000/-, in default to suffer simple imprisonment for six months.

2. Heard. Issue notice to the respondent. Learned A.P.P. waives service of notice for respondent – State.

3. Learned counsel for the applicant would submit that the applicant has been behind the bars for little over nine years. Two of the three eye witnesses did not stand by the prosecution. Presence of the third one was doubtful. Our attention was adverted to the reasons therefor. Learned counsel, therefore, urged for grant of the application.

4. Learned A.P.P. would, on the other hand, submit that the case was based on eye witness account. The trial Court has convicted the applicant with sound reasons. Hearing of the appeal could be expedited. He, therefore, urged for rejection of the application.

5. Considered the submissions advanced. Perused the impugned judgment and the relevant evidence relied on. The applicant committed murder of one Mohammad Hussain Khan on 07<sup>th</sup> April, 2013. About twenty-five injuries were noticed on his person. The deceased died of head injury.

6. The case was based on evidence of three eye witnesses. Two of them did not stand by the prosecution. The third one claimed to have been residing on rent in the vicinity in which the murder took place. It was however, brought on record that the said witness was financially sound. He has his own house to reside in away from the scene of offence. A witness was examined in defence to prove that he was residing in the premises in which

the said witness claimed to have been residing at the material time. As such, it is a matter of re-appreciation of evidence of an eye witness, based on whose account the applicant has been convicted. These are the prima facie observations.

7. The applicant has been behind the bars for little over nine and half years (minus covid bail for one or two years, if any). The appeal is of 2021. It is not likely to come up for hearing by its turn in the near future. We are, therefore, inclined to allow the application. Hence, the following order :-

### **ORDER**

(i) Criminal application is allowed in terms of prayer clause (B).

(ii) Pending the appeal, execution of substantive sentence of imprisonment imposed by the trial Court is suspended. The applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) Bail before the trial Court.

**( R.M. JOSHI, J. )**

**( R.G. AVACHAT, J. )**

SSD