

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

**CRIMINAL APPLICATION NO. 3721 OF 2022
IN
CRIMINAL APPEAL NO. 846 OF 2022**

Roshan Natha Ingole

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ
DATE : 28th NOVEMBER, 2022**

PER COURT :

1. This is an application for suspension of substantive sentence of imprisonment passed by the learned Sessions Judge, Parbhani vide judgment and order dated 22nd September, 2022 in Session Case No. 1 of 2021. The applicant has been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (I.P.C.). The applicant is sentenced to suffer imprisonment for life and to pay fine of Rs.2,500/- with default stipulation.

2. Heard.

3. The applicant and his associate (co-convict) were alleged to have murdered their friend – Nitin at 06:30 p.m. on 24th September, 2020. Both of them slit throat of the deceased with cutters. The case was based on circumstantial evidence. The circumstances relied on are in the nature of -

- (i) last seen together;
- (ii) disclosure statement made by the co-convict and;
- (iii) recovery of blood stained clothes of the applicant pursuant to the disclosure statement made by him.

4. It was the prosecution case that the deceased, the applicant, co-convict and their three friends were together. All of them consumed liquor. The three friends viz. P.W.2 – Suryakant, P.W.3 – Vijay and P.W.8 – Vishal left for their respective residence. P.W.2 and 3 did not stand by the prosecution. P.W.8 testified that he was in the company of all the remaining three. They consumed liquor together. It is, however in his evidence that police had detained him for about twenty-five days. His statement under Section 161 of the Code of Criminal Procedure was recorded six days after the incident. The question in the appeal is, therefore, whether testimony of this witness is reliable one.

5. Pursuant to the disclosure statement made by the applicant, a jeans pant on his person, at the time of commission of the crime, came to be seized. Blood stains on the said jeans pant are found to be that of the blood

group of the deceased. Whether the disclosure statement made by the co-convict, naming the applicant to have participated in committing murder of the deceased, would be admissible in evidence in view of the disclosure statement made by the applicant, pursuant to which a blood stained jeans pant came to be seized, is again a question of appreciation in the present appeal. Admittedly, the applicant was on bail pending trial. It will take not less than 7-8 years for the appeal to have its turn for final hearing.

6. On perusal of the impugned judgment and relevant evidence on record and the facts referred to hereinabove, we find it to be a fit case to allow the application. Hence, the following order :-

ORDER

(i) Criminal application is allowed in terms of prayer clauses [B] and [C].

(ii) Pending the appeal, the 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