

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

**INTERIM APPLICATION NO. 676 OF 2021
IN
CRIMINAL APPEAL NO. 432 OF 2021**

Namdev Jamlu Rathod ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Shailesh Kharat, for the Applicant.
Mrs. Veera Shinde, APP for the Respondent – State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 15th JUNE 2022.

P. C. :

. Heard learned Counsel for the parties.

2 By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.

3 The applicant, vide judgment and order dated 17/01/2019 passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.174 of 2016, has been convicted and sentenced

as under :-

- for the offence punishable under Section 302 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo further rigorous imprisonment for six months;
- for the offence punishable under Section 201 of the Indian Penal Code to suffer rigorous imprisonment for seven years and to pay fine of Rs.3000/-, in default, to undergo further rigorous imprisonment for 3 months;
- All the substantive sentences were directed to run concurrently.

4 The Appeal has been admitted by this Court vide order dated 29th April, 2021.

5 Learned Counsel for the applicant submits that a perusal of the statements of eye witnesses would show, that the incident had taken place at the spur of moment, between the applicant and his wife in their house. He further submits that the applicant is alleged to have brought a knife i.e. kitchen knife from the house and assaulted his

wife on her chest. He submits that the assault was not a premeditated assault and that it is a case of a single blow. He submits that it is not a case, where the applicant assaulted his wife again after the first blow. Learned Counsel for applicant submits that the offence, if any, would not be one under Section 302 of the IPC, but would be a lesser offence. He further submits that the doctor, who conducted the postmortem, has not been examined by the prosecution. He submits that in the facts, it was incumbent for the prosecution to examine the doctor, though the applicant had admitted the postmortem report under Section 294 of the Code of Criminal Procedure.

6 The applicant is in custody since 4th February, 2016. It is a case of single blow. The applicant allegedly assaulted his wife with a kitchen knife, during a quarrel which took place between him and his wife.

7 The appeal has been admitted vide Order dated 29th April, 2021 and the same is not likely to be heard in the immediate near future. The applicant is in custody for about six years.

8 Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

I) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall

make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9 The application is accordingly disposed of.

10 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.