

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

***INTERIM APPLICATION NO. 459 OF 2022
(FOR BAIL U/SEC. 389 OF CR.P.C.)***

***IN
CRIMINAL APPEAL NO. 125 OF 2022***

Umesh Sharnappa Kesare	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ujjwal Agandsurve for the Applicant

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent–State

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 19th JULY 2022**

P.C. :

1 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 the appeal.

3 The applicant, vide judgment and order dated 21st December 2021 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 26/2019, has been convicted under Section 302 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer rigorous imprisonment for 6 months.

4 Perused the papers with the assistance of the learned counsel for the parties.

5 The prosecution case rests on circumstantial evidence. According to the prosecution, the incident took place on 15th October 2018 at about 3:00 p.m. It is alleged that there was a quarrel between the applicant and his brother-Nagesh, as Nagesh was demanding tobacco which was refused by the applicant. It is alleged that in the said quarrel, the applicant assaulted Nagesh with fist and kick blows in his abdomen. Nagesh was taken to the Civil Hospital, Solapur, on 19th

October 2018, when he complained of pain in his abdomen. Nagesh expired on 19th October 2018.

6 The prosecution has examined four witnesses i.e. PW 1-Mainabai (mother of the applicant), PW 2-Shankar (brother of the applicant), PW 3-Sonali (sister of the applicant) and PW 4- PI Bhimaji Patil (Investigating Officer), in support of its case.

7 A perusal of the evidence of PW 1-Mainabai shows that her evidence including her cross-examination is replete with contradictions. Admittedly, neither PW 1-Mainabai, PW 2-Shankar or PW 3-Sonali were present in the house, at the relevant time. PW 1-Mainabai, in her cross-examination, has contradicted herself with respect to the incident that took place on 15th October 2018, pursuant to which, Nagesh sustained injuries. It also appears from her evidence that the doctor had disclosed that due to bleeding in the head, her son-Nagesh could not survive, however, the cause of death as revealed from the post-mortem report shows that the deceased died due to

“Liver Cirrhosis with early coronary atherosclerosis associated with Injury”. The applicant is in custody since his arrest.

8 Learned counsel for the applicant submitted that there are several contradictions that have cropped up in the evidence of the witnesses with respect to the incident dated 15th October 2018. He submits that Nagesh was an alcoholic and had fallen down, as a result of which, he had sustained injuries on his head. He further submitted that the cause of death does not show that Nagesh died due to the assault by the applicant on his abdomen. He further submitted that under no circumstance, the offence would fall under Section 302 of the Indian Penal Code and if at all, the offence would be a lesser offence.

9 We have noted that the evidence of the witness i.e. PW 1-Mainabai, in particular, is replete with contradictions. It also appears from the post-mortem report that the cause of death is “Liver Cirrhosis with early coronary atherosclerosis associated with Injury”.

10 Considering the evidence on record, the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions :

ORDER

- i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two 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.

11 The application is disposed of accordingly.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.