

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

***INTERIM APPLICATION NO. 478 OF 2021
(Application for Bail and Suspension of Sentence)
IN
CRIMINAL APPEAL NO. 328 OF 2020***

Tatoba Pandurang Gardade ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Aniket U. Nikam i/b Mr. Vivek Nandkishor Arote for the
Appellant

Mrs. P. P. Shinde, A.P.P for the Respondent–State

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 2nd AUGUST 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 18th February 2020, passed by learned Additional Sessions Judge, Pune, in Sessions Case No. 617/2017, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default of payment of fine, to undergo simple imprisonment for 6 months;
- for the offence punishable under Section 504 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay fine of Rs.3,000/-, in default of payment of fine, to undergo simple imprisonment for 1 month;
- for the offence punishable under Section 506 of the Indian Penal Code, to suffer rigorous imprisonment for 2 years and to pay fine of Rs.6,000/-, in default of payment of fine, to undergo simple imprisonment for 2 months;

- The applicant has also been convicted for the offence punishable under Section 323 of the Indian Penal Code, however, no separate sentence was awarded.
- The applicant was acquitted for the offence punishable under Section 182 of the Indian Penal Code.

All the sentences were directed to run concurrently.

4 Perused the papers with the assistance of the learned counsel for the parties. The prosecution case rests on the sole testimony of the PW 2-Sanika Gardade, who is stated to be an eye-witness to the alleged incident (turned hostile) and circumstantial evidence in the form of recovery of blood-stained clothes at the instance of the applicant and an alleged extra-judicial confession made by the applicant to PW 1-Sunita Bergal.

5 As noted above, the daughter of the applicant, the alleged eye-witness to the incident of assault i.e. throttling by the applicant of

his wife, has turned hostile and has not supported the prosecution case.

6 As far as evidence of extra-judicial confession allegedly made by the applicant to PW 1-Sunita (complainant) is concerned, it appears that the said statement was made to PW 1-Sunita, in the police station, after the applicant was arrested.

7 As far as recovery of blood-stained clothes at the instance of the applicant is concerned, it appears from the evidence that the applicant had also accompanied the relatives when his deceased wife was taken to the hospital and as such, finding of blood-stains on his person, cannot *prima facie* be said to be incriminating. The applicant is in custody since 2017. The appeal has been admitted by a separate order passed on 8th March 2021. The appeal is not likely to be heard in the immediate near future.

8 Considering the overall evidence on record, 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 executing PR Bond in the sum of Rs. 25,000/- 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.

9 The application is disposed of accordingly.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.