

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

***CRIMINAL INTERIM APPLICATION NO.661 OF 2022
IN
CRIMINAL APPEAL NO.193 OF 2022***

Mahendra @Dada Kalu Malle ...Applicant/Accd.
Versus
The State of Maharashtra ...Respondent

Mr. Aniket Vagal, for the Applicant.

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

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 28th 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 aforesaid appeal.
3. The applicant vide Judgment and Order dated 4th January 2022, passed by learned Additional Sessions Judge, Nashik in Sessions

Case No. 323 of 2017, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- in default, to suffer further rigorous imprisonment for six months.

4. Learned Counsel for the applicant submits that although there are eye-witnesses to the incident, there is some discrepancy with respect to the exact spot where the alleged incident had taken place. He submits that despite the alleged incident having taken place in a crowded locality, not a single independent witness has been examined by the prosecution, except the mother, son and cousin of the deceased. He submits that the deceased – Rohidas Malle used to commit theft of electricity, as a result of which there used to be frequent quarrels between the applicant and deceased – Rohidas. He submits that taking into consideration the facts of the case, the offence would not be one under Section 302, but would be a lesser offence. He submits that even the prosecution case is not clear whether the applicant is alleged to have assaulted the deceased with a stick or with a bamboo. He

submits that the cause of death is stated to be a 'Head Injury'. He submits that even the doctor i.e. PW2 – Dr. Ramesh Gadhari has not in his evidence stated that injuries allegedly caused by the applicant were sufficient in the ordinary course of nature to cause death, more particularly when the deceased is stated to have expired in the hospital on the next day i.e. 30th June 2017. He submits that the applicant was on bail pending trial and has not misused or abused the liberty granted to him.

5. Learned APP opposes the application.

6. Perused the papers. There are eye-witnesses to the incident of assault by the applicant on deceased – Rohidas, which took place on 29th June 2017 at about 7:00 p.m. According to PW1, mother of the deceased, the incident took place opposite a Barbar Shop, whereas according to PW3, son of the deceased, the incident started opposite their house. It appears from the nature of the cross-examination and the evidence on record that there were verbal abuses between the

applicant and the deceased with respect to the theft of electricity. A perusal of the evidence of PW6 – Devidas shows that after the quarrel which took place between the applicant and the deceased, both took separate ways and that thereafter, when they came to the spot, the applicant assaulted the deceased with a stick on his head. Admittedly, no independent witness has been examined. Although, the witnesses have denied that there was any dispute between the deceased and the applicant, *prima facie*, it appears that there was some dispute between the two. Whether or not the offence would be one under Section 302 of Indian Penal Code or a lesser offence, is a matter which will be decided at the time when the aforesaid appeal is decided finally. It is not in dispute that the applicant was on bail pending trial and that he has not misused or abused the liberty granted to him.

7. Considering the overall evidence on record and what is stated hereinabove, 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 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.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.