

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

**INTERIM APPLICATION NO.667 OF 2022
IN
CRIMINAL APPEAL NO.196 OF 2022**

WITH

**INTERIM APPLICATION NO.668 OF 2022
IN
CRIMINAL APPEAL NO.196 OF 2022**

Shankar Janappa Karane Applicant

versus

State of Maharashtra Respondent

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- Mr. M. K. Kocharekar, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 05th SEPTEMBER, 2022**

P.C. :

1. Both these Applications are filed for suspension of sentence and releasing the Applicant on bail during pendency of Criminal Appeal No.196 of 2022. The Applicant was convicted by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai, in Sessions Case No.93 of 2014 vide his

Nesarikar

judgment and order dated 20/01/2022. The Applicant was charged with commission of offence punishable u/s 302 of the Indian Penal Code. However, he was acquitted from that charge and instead was convicted for an offence punishable u/s 304 (Part II) of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default to suffer rigorous imprisonment for six months. The Applicant was granted set off for the period he had undergone as an under trial prisoner. He was in custody before the trial from 07/07/2013 to 13/08/2014. Thereafter he was on bail during trial. After his conviction he was taken into custody and as of now he has completed almost 1 year and 8 months of his actual imprisonment.

2. Heard Mr. M. K. Kocharekar, learned counsel for the Applicant and Smt. M. R. Tidke, learned APP for the State.
3. The prosecution case is that on 07/07/2013 the deceased Katalappa Jetharam was cleaning his cot. On this petty

issue there was quarrel between him and the Applicant. During the quarrel the Applicant pushed him on the ground and banged his head against a stone. Because of this, Katalappa suffered injuries and ultimately succumbed to his injuries.

4. Learned counsel Mr.Kocharekar submitted that it was a petty issue and a petty quarrel. During quarrel, the head of the deceased was banged against the ground. So offence punishable u/s 304 (Part II) may not be made out. The sentence is too harsh. He has no antecedents. He was in custody for more than 1 year and 8 months. He was on bail during trial.
5. Learned APP opposed this application. She submitted that the offence is serious. One life is lost.
6. I have considered these submissions. I have perused the evidence of the eyewitnesses as well as the medical evidence. There are two eyewitnesses P.W.1 Raju Earapulla and P.W.3 Smt. Katalamma Earapulla. Their evidence is consistent.

Both of them have deposed that the quarrel had started on a petty issue and during quarrel the head of the deceased was banged on the ground by the Applicant.

7. All these issues whether the offence punishable u/s 304 (Part II) of IPC is made out or whether any lesser offence is made out, will have to be decided during final hearing of the Appeal. The Appeal is already admitted. The Applicant was on bail during trial. There is some force in the submissions of learned counsel Mr.Kocharekar that it may be a lesser offence calling for lesser punishment. He has not misused his liberty when he was on bail. Therefore the Applicant can be granted bail during pendency and final disposal of the Appeal.

8. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.196 of 2022, the Applicant

is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.

- (ii) Both the Interim Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)