

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

**INTERIM APPLICATION NO. 781 OF 2021
IN
CRIMINAL APPEAL NO. 8 OF 2018**

Arshadali @ Mister Shoukatali Siddhique ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Keshav Chavan, for the Applicant.
Mr. S. S. Pednekar, APP for the Respondent – State.

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

DATE : 24th JUNE 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 his aforesaid appeal.
3. The applicant, vide judgment and order dated 17th November, 2017 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Sessions Case No. 42 of

2014, has been convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and with fine, for the offence punishable under Section 302 of the Indian Penal Code. Separate sentences have been awarded for the offences punishable under Section 201 of the Indian Penal Code and under Section 27 of the Arms Act.

4 Perused the papers. The prosecution case rests entirely on circumstantial evidence. According to the prosecution, the applicant was last seen with the deceased on the day of the incident. The alleged motive is stated to be a love affair between PW-2 and the deceased. There is also an alleged recovery of a chopper at the instance of the applicant. A perusal of the evidence of PW-8-Karamat Zakir Husain, shows, that on 07/11/2013 at about 7-00 p.m. when he was going towards Sakinaka, he saw Allauddin i.e. the deceased, near the show-room of Skoda Company, near Sakinaka Police Station. According to PW-8-Karamat Zakir Husain, Allauddin (deceased), Arshad (applicant) and Radhyesham were standing there and talking to each other. The said witness has further stated that he

asked Allauddin (deceased) where he was going, to which he replied, that he had taken monies from Sarfaraj and that he was going to Goregaon. According to the said witness, Allauddin (deceased) did not return home thereafter. The dead body was found at Aarey colony. It is not clear from the evidence of the said witness, that Allauddin was to go alone or with others to Goregaon. PW-2 Suman Jain was examined on the point of motive. Prima facie, her evidence does not throw light on this aspect. According to PW-2-Suman, when she called Allauddin on 07/11/2013, Allauddin disclosed to her that he was at Goregaon. She has stated that when she was talking with Allauddin on his mobile, she heard the voice of the applicant. This is a weak piece of evidence. As far as recovery of clothes and two mobiles are concerned, it appears that they were burnt by pouring petrol. Although, the applicant is alleged to have shown the place where the bag was thrown, nothing was seized from the said place. As far as recovery of chopper is concerned, the same was found at a distance of 10 ft. from where the dead body was found.

5 The applicant is in custody since 11/11/2013. The appeal has

been admitted vide order dated 14/03/2018 and the same is not likely to be heard in the immediate near future.

6 Considering the 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 furnishing P.R. Bond in the sum of Rs.20,000/- with one or two local 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.

7 The application is accordingly disposed of.

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.