

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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INTERIM APPLICATION NO. 920 OF 2022
IN
CRIMINAL APPEAL NO. 582 OF 2022

Zishan @ Navaz Ahamad Mohd.
Nakhi Siddique

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr.Mubin Solkar i/b. Mrs.Tahera A.R. Qureshi for the Applicant.
Mrs. P.P. Shinde, APP for the Respondent -State.

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

DATE : 12th 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 his appeal.
3. The applicant, vide judgment and order dated 28th November,

2019 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Sessions Case No. 25 of 2014, 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. 1,00,000/-, in default to undergo further rigorous imprisonment for three years;
- for the offence punishable under Sections 397 read with 394 of the Indian Penal Code to suffer rigorous imprisonment for ten years and to pay fine of Rs. 25,000/-, in default, to undergo further rigorous imprisonment for one year;

All the substantive sentences were directed to run concurrently.

4 Perused the papers with the assistance of the learned Counsel for the applicant and the learned APP. The prosecution case rests entirely on circumstantial evidence. The circumstances are; (i) evidence of last seen; (ii) recovery of articles at the instance of the applicant, and, (iii) the CCTV footage.

5. As far as the evidence of CCTV footage is concerned, the said evidence has been discarded by the learned Sessions Judge for the reasons set out in the impugned judgment and order.

6. As far as the evidence of last seen is concerned, the prosecution has examined two witnesses i.e. PW-8-Ram Narayan Shriram Varma and PW-9-Shaligram Dayaram Rawat. PW-8 – Ram Narayan Shriram Varma in his evidence states that at the relevant time, he was working as a watchman and was attached to Chincholi wine shop at Malad Link Road. He states in his examination in chief that on 15th October, 2013, he was informed by his owner to supply 2 beer cans and one packet of cigarette to the occupants of flat no. 2601 (flat of the deceased), that he supplied those articles and in response to that the deceased gave an acknowledgment, after which, he left the said place. He has further stated that before handing over the beer cans and cigarette to the occupant (deceased), he had been to the security guard; that he discussed with him and was directed to meet another security guard; that accordingly, he met another guard and disclosed to him that he wanted to handover the articles i.e. beer cans; that in response to that, the security guard

contacted the occupant of that flat on intercom; after which the security guard allowed him to go to the flat. PW-8 -Ram Narayan Shriram Varma has further stated that he went to the 26th floor and pressed the door bell of flat no. 2601; that the occupant opened the gate and that he handed over two beer cans and one cigarette packet to him; and that the occupant paid him Rs. 500 though the bill was of Rs. 360/-. He has further deposed that after two days, this witness came to know that the man to whom he had supplied the aforesaid articles has been murdered. Pursuant thereto, PW-8- Ram Narayan Shriram Varma was called by the police to Bangur Nagar Police Station, enquiry was made. PW-8- Ram Narayan Shriram Varma has in his evidence disclosed that when he handed over the aforesaid articles to the occupant, there was another person sitting on the sofa.

7. The evidence of PW-9 – Shaligram Dayaram Rawat is on similar lines.

8. The applicant was arrested on 25th October, 2013 in connection with the said case. The test identification parade was

conducted by the prosecution after two months from the date of incident. Prima facie, the evidence of last seen of both witnesses is shaky and does not inspire confidence.

9. As far as the recovery is concerned, there are some discrepancies with respect to the said evidence.

10. Considering the evidence on record and the fact that the applicant is in custody since 2013, 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 not contact or threaten the victim, witnesses or any person concerned with the case;
- iv) 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;
- v) 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 accordingly disposed of.

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.