

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

***CRIMINAL INTERIM APPLICATION NO.1096 OF 2022
IN
CRIMINAL APPEAL NO.410 OF 2022***

Imran Anwar Kazi

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Prashant Pandey a/w Mr. Irfan Unwala, Mr. Darshit Jain, Mr. Aiqan Z. Memon, Ms. Vidhi Karia and Mr. Ashish Jain, i/b W3Legal LLP, for the Applicant.

Mr. A. R. Kapadnis, A.P.P for the Respondent No.1 – State.

Mr. Kaushik Mhatre, for the Respondent No.2.

PSI – Vilas Tambe, Dindoshi Police Station, is present.

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

DATE : 23rd JUNE 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this interim 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 alongwith other co-accused vide judgment and order dated 23rd December 2021 passed by learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.44 of 2015, has been convicted for the offences punishable under Sections 302 r/w 149, 324 r/w 149, 323 r/w 149, 506(2) r/w 149, 143, 144, 147, 148 of the Indian Penal Code. For the offence punishable under Section 302 r/w 149 of the Indian Penal Code, the applicant alongwith other co-accused is sentenced to suffer imprisonment for life and to pay fine of Rs.7,000/- each, in default, to suffer rigorous imprisonment for one year. The applicant alongwith other accused has also been awarded separate sentences for the other offences. All the sentences were directed to run concurrently.

4. Perused the papers in particular the statements of the eye-witnesses i.e. PW12 – Rajesh Jadhav (complainant and eye-witness); PW15 – Hitesh Trivedi and PW19 – Utkarsha Raikar. It appears from the evidence of the eye-witnesses that the incident took place on 21st October 2014 at about 5:00 to 5:15 p.m. According to PW12 – Rajesh

Jadhav, he saw a quarrel between accused No.1 – Sohail Ansari, applicant – Imran Kazi and Shahrukh Sajida on the one hand and their neighbours, Jayesh Trivedi, Hitesh Trivedi and their mother – Daya Trivedi, on the other; that when PW12 – Rajesh and his cousin – Ramesh Jadhav (deceased) went to intervene in the said quarrel, the accused started assaulting him (PW12 – Rajesh) and Ramesh (deceased); that accused No.1 – Sohail rushed to his house and again returned to the spot of the incident with a sword and assaulted Ramesh (deceased) with the said sword; that Shahrukh allegedly assaulted him (PW12 – Rajesh) with a wooden bamboo; that at that time, accused No.4 – Gullu Sajida came to the spot with a gupti and pierced the said gupti in the left thigh of Ramesh Jadhav; that, accused No.2 - Yusuf Ali and the present applicant – Imran held Ramesh Jadhav; that accused No.1 – Sohail inflicted a blow on the hand of Daya Trivedi, with a sword; that when he (PW12 – Rajesh) tried to intervene to save Ramesh (deceased), Shahrukh threatened him; that after a gap of half a minute, Ramesh was freed, after which Ramesh fell on the ground. The role ascribed to the applicant is that of holding

deceased - Ramesh Jadhav. A perusal of the evidence of PW19 – Utkarsha Raikar reveals that the applicant – Imran is alleged to have held Ramesh's neck; that accused No.2 - Yusuf Ali asked other accused to kill him, after which accused No.1 – Sohail gave a blow of sword on Ramesh's chest; that when accused No.1 – Sohail gave another blow, Ramesh is allegedly raised his hand to save himself from the said blow, pursuant to which Ramesh received an injury on his right hand and chin. Thereafter, accused No.4 – Gullu Sajida is alleged to have pierced an iron gupti on Ramesh's left thigh, which came out from the anterior side and as there was heavy bleeding, Ramesh started shouting for help. It is alleged by PW19 – Utkarsha that when PW 12 - Rajesh came and went towards Ramesh Jadhav, to help him, accused – Shahrukh who was holding a bamboo stick in his hand, threatened Rajesh not to interfere or he too would be assaulted. It is alleged that after the incident, all the accused and Shahrukh left the spot with weapons in thier hands. As far as PW15 - Hitesh Trivedi is concerned, he has stated that the incident took place on 21st October 2014 at about 5:00 to 5:15 p.m. when he was washing

his bike in front of his house. He has stated that accused No.1 – Sohail was looking at him angrily, however, he did not pay heed to the same; that after washing his bike, he returned home, at which time accused No.1 – Sohail asked him, why he was looking at him and that nobody would dare to ask him about his behaviour; that accused No.1 – Sohail started abusing him; that on hearing the said abuses his mother and brother – Jayesh came out of the house; that accused No.1 – Sohail also started abusing them; that thereafter accused No.1 – Sohail returned to his house and again came to the spot in an auto rickshaw with an iron rod; that accused No.2 - Yusuf Ali and his son Shahrukh followed accused No.1 – Sohail; that accused No.1 – Sohail, accused No.2 - Yusuf Ali and Shahrukh started assaulting him (Hitesh), his mother and brother – Jayesh; that at that time, the accused No.3 i.e. the present applicant is also stated to be present with them and he is also alleged to have assaulted them; that as he, his mother and brother started shouting, PW12 - Rajesh Jadhav came to the spot and started separating the quarrel, however, the accused also started assaulting Rajesh Jadhav. Thereafter, accused No.1 – Sohail is alleged

to have gone to Wali Mohammed chawl and returned to the spot with a sword; that Ramesh (deceased) who was returning home from his work place intervened in the quarrel; that accused No.1 – Sohail is alleged to have given a blow of sword on his (PW15's) mother and as his mother raised her left hand to rescue herself from the said blow, she sustained injury on her left palm; that accused No.4 – Gullu came from behind and that he was having a gupti in his hand; that Ramesh (deceased) tried to persuade accused No.4 – Gullu and others, however, accused Nos.1 to 4 and Sharukh went towards Ramesh, held him, dragged him, after which, accused No.2 – Yusuf pushed Ramesh against the wall and pressed him against the wall. The applicant is alleged to have pressed Ramesh's neck; thereafter, accused No.1 – Sohail is alleged to have given a blow with his sword on Ramesh's chest and, thereafter, accused No.4 – Gullu is also alleged to have pierced a gupti on the left thigh of Ramesh.

5. *Prima facie*, there are discrepancies in the ocular evidence of all the 3 eye-witnesses with respect to the role of the

applicant. Even otherwise, the applicant is not alleged to have been armed with any weapon nor is he alleged to have assaulted any of the injured with a weapon. It is not in dispute that the applicant was on bail, pending trial. The appeal has been admitted by this Court vide order dated 7th June 2022.

6. Considering the evidence on record, the role attributed to the applicant and the fact that the applicant was on bail, pending trial, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions :-

ORDER

- i) The applicant be released on cash bail in the sum of Rs. 25,000/-, for a period of four weeks;
- ii) The applicant shall within the said period of four weeks, furnish P. R. Bond in the sum of Rs. 25,000/-, with one or two sureties in the like amount;

- iii) 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;
- iv) The applicant shall keep the trial Court informed of 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.

. The application is disposed of on the aforesaid terms.

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.