

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

***INTERIM APPLICATION NO.1301 OF 2021
IN
CRIMINAL APPEAL NO.213 OF 2020***

Bashir Harun Ansari

..... Applicant

Vs.

The State of Maharashtra

..... Respondent

Mr. Chetan S. Damre for the Applicant.

Mrs. P. P. Shinde, APP for Respondent.

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

DATE : 25th JULY 2022.

P. C.

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 30th September 2019, passed by learned Additional Sessions Judge, Niphad in Sessions Case No. 56 of 2017, has been convicted and sentenced as under:-

- For the offence punishable under section 302 read with 34 of IPC to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- in default of payment of fine, to suffer further rigorous imprisonment for a period of one year.

- For the offence punishable under section 120-B of IPC to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default of payment of fine, to suffer further rigorous imprisonment for a period of one year.

- For the offence punishable under section 404 read with 34 of IPC to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default, to suffer further rigorous imprisonment for a period of two months.

All the sentences were directed to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the applicants and the learned APP. The prosecution case rests entirely on circumstantial evidence. The circumstances being, evidence of last seen and recovery of Rs.10,000/- at the instance of the applicant. As far as last seen evidence is concerned, the prosecution has examined three witnesses in support thereof, i.e. PW-2-Ramchandra Damodar Deore, PW-3-Shabbir Dawoodkhan Multani and PW-4-Santosh Shankar Mali. As far as PW-3-Shabbir is concerned the said witness has turned hostile. As far as PW-4-Santosh is concerned, the applicant was not known to the said witness and no TIP was conducted. As far as PW-2-Ramchandra is concerned, a perusal of his evidence shows that on 27/4/2017 at about 3.00 p.m. he saw Kalim and deceased together, proceeding on the Luna of Lalkha towards Vaijapur. He has further stated that he had also seen Bashir (Applicant) and Farukh on their motor cycle and that they were also going towards Vaijapur. This evidence of last seen, *prima facie* appears to be shaky. The other evidence, is stated to be recovery of Rs.10,000/- from the applicant. That by itself is not sufficient to connect the applicant with the alleged offence. The applicant while on bail pending trial

has not abused or misused the liberty granted to him.

5. Considering the aforesaid, 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.

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

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

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.