

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

***INTERIM APPLICATION NO.1451 OF 2022
IN
CRIMINAL APPEAL NO.708 OF 2016***

Dattatraya Shankar Patil Applicant-Appellant
Vs.
State of Maharashtra Respondent

Dr. Yug Mohit Chaudhry for the Applicant-Appellant.
Mrs. P. P. Shinde, APP for Respondent-State.

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

DATE : 23rd AUGUST 2022.

P. C.

1. Heard the 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 13/10/2016, passed by the learned Addl. Sessions Judge, Kolhapur, in Sessions Case No.148 of 2013, 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.10,000/- in default, to suffer RI for 1 year;
- for the offence punishable under Section 323 of the Indian Penal Code, to suffer simple imprisonment for 6 months and to pay fine of Rs.500/- in default, to suffer simple imprisonment for one month.

4. Perused the papers with the assistance of the learned counsel for the parties.

5. The applicant alongwith others i.e. accused No.2 and 3 was prosecuted for the murder of Kuldeep Dhondiram More(deceased). After a full fledged trial, the applicant alongwith his parents i.e. accused Nos.2 and 3 were convicted for the offence under section 302 read with 34 of the Indian Penal Code. It is not in dispute that the accused Nos.2 and 3's sentences have been suspended and they have been enlarged on bail, having regard to

their role in the commission of the offence. As far as the applicant is concerned, the learned counsel for the applicant submits that even taking the evidence as it stands, no offence under section 302 of the IPC is disclosed and that at the highest, the offence if any, will be one under section 304-II of the IPC. Learned counsel relied on the statements of the eye witnesses i.e. PW-2-Maruti Repe and PW-4-Dattatray Patil to show that it is the deceased who had taken the said witnesses and gone to the house of accused and questioned the accused with respect to the assault that has taken place earlier, on the father of the deceased.

6. A perusal of the evidence of PW-2-Maruti Repe and PW-4-Dattatray Patil shows that an incident had taken place earlier, in which the applicant has allegedly assaulted deceased's father with a stone. Admittedly, no complaint was filed as against the applicant at the relevant time. It further appears from the evidence, that the deceased alongwith PW-2-Maruti and PW-4-Dattatray had visited the house of the applicant and questioned the applicant's parents with respect to the assault on his father and that there was a quarrel. It appears that pursuant thereto, the applicant

came with *gupti* and assaulted the deceased in his chest, twice. A perusal of the evidence of the Doctor shows that injuries were not deep. The applicant is in actual custody for about 9 and 1/2 years.

7. Having regard to what is observed hereinabove and the manner in which the incident has taken place, *prima facie*, it is doubtful whether the offence would fall one under section 302 of the IPC. 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.15,000/- 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.

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

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

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