

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1725 OF 2022****IN****CRIMINAL APPEAL NO. 796 OF 2014**

Rahim Ismail Shaikh

... Applicant/Appellant

V/s.

The State Of Maharashtra

... Respondent

Mr. Kuldeep Patil a/w Mr. Shailesh Chavan and Mr. Vishal Khatavkar for Applicant/Appellant.

Mrs. M. H. Mhatre APP, for Respondent-State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 13th DECEMBER, 2022.

P.C. :

1. This is an Application for suspension of sentence and releasing Applicant on bail.
2. Applicant/Appellant has been convicted under Section 302 of the Indian Penal Code (for short “the IPC”) and has been sentenced to suffer rigorous imprisonment for life by the learned Additional Sessions Judge, Pune in Sessions Case No. 862 of 2008 by its Judgment and Order dated 30th May, 2014.
3. Heard Mr. Patil, learned Advocate for Applicant and Mrs. Mhatre, learned APP for State. Perused notes of evidence.
4. Applicant is Original Accused No.1 in the present crime. The date and time of incident is 27th August, 2008 between 10.00 a.m. to 10.30

a.m. near Kivale bridge, Vikas Nagar, Pune. The name of deceased is Kumar Dangat.

5. It is the prosecution case that, Ms. Shamshad Ismail Shaikh i.e. younger sister of Applicant was having love affair with Sachin Dangat i.e. brother of deceased Kumar Dangat. The said affair was opposed by Applicant and family members of Ms. Shamshad. On an earlier occasion, Applicant alongwith his companion had beaten Sachin Dangat. That, subsequently marriage of Ms. Shamshad was performed with someone else however Applicant used to stare at Sachin Dangat due to the said reason i.e. his love affair with Ms. Shamshad. That, on the date of incident Kumar Dangat (deceased) alongwith Sukhdev @ Sukesh Dangat was proceeding to Pune. They halted their vehicle towards Kivale Bridge and started to proceed towards Savera Hotel. At that time, one Maruti Esteem car came at the scene of offence and stopped near Kumar Dangat. Applicant and Accused Babu Durrai (Org.A-2) step down from the said car with revolvers in their hands and fired gun shots on the person of Kumar Dangat. Kumar Dangat ran towards Kivale bus stop however after crossing some distance fell down. It is alleged that, other Accused persons also assaulted Kumar Dangat with sharp edged weapons. The said incident was witnessed by PW-1, PW-2 and PW-3.

6. During the course of investigation, Applicant came to be arrested in the Month of August, 2008. As noted earlier, by the impugned

Judgment and Order, Trial Court has convicted and sentenced Applicant for life imprisonment.

7. Record indicates that, co-accused namely Babu Durrai (Org.A-2) has been released on bail by this Court by an Order dated 5th July, 2019. *Prima-facie* it appears that, there is an ambiguity about the fact, as to from which weapon the empty cartridges found at the scene of offence were fired. PW-11 has stated that, Applicant and Babu Durrai (Org.A-2) used “revolvers” however, it is the prosecution case that, Applicant used country made pistol while committing the said offence and it was co-accused Babu Durrai (Org.A-2) who was holding revolver in his hand. *Prima-facie*, it appears that, the pellets fired from the said fire arms have passed through the body of deceased except the pellet which stuck in his skull.

8. As noted earlier, co-accused Babu Durrai (Org.A-2) who has attributed with the same and similar role, has been released on bail by this Court. The only additional circumstance against Applicant is of motive revolving around him.

9. Applicant is in jail since last more than 12 years. As co-accused Babu Durrai (Org.A-2) who has been attributed with the same and/or similar role has been released on bail, according to us, principal of parity also applies to the Applicant and therefore Applicant is entitled to be released on bail.

10. Hence the following Order :

During the pendency of Criminal Appeal No. 796 of

2014, the substantive sentence imposed upon Applicant is suspended and he is released on bail on following terms and conditions.

- (i) He shall execute personal bond in sum of Rs.25,000/- with two local sureties in the like amount.
- (ii) He shall give address at which he shall always be available during the pendency of this Appeal alongwith his contact numbers.
- (iii) Similar details in relation to his sureties shall also be furnished.
- (iv) He shall not in any way directly or indirectly attempt to contact or pressuize either complainant or any of the witnesses in the matter.
- (v) He shall keep vakalatnama of his Advocate alive and valid till the Appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.
- (vi) He shall report to the Superintendent/Registrar of Additional Sessions Court, Pune on first working Monday in every month until further Orders as a condition of his release.

11. Application is allowed in the aforesaid terms.