

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

***INTERIM APPLICATION NO. 1927 OF 2022
(For Bail and Suspension of Sentence)
IN
CRIMINAL APPEAL NO. 635 OF 2022***

Sumit Sandip Dindorkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Niranjana Mundargi a/w Mr. Bhomesh Bellal i/b Ms. Anusha Pradhan for the Applicant

Mr. A. R. Kapadnis, A.P.P for the Respondent–State

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 26th 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 the appeal.

3 The applicant, along with other co-accused, vide judgment and order dated 8th April 2022 passed by learned District Judge-2 and Additional Sessions Judge, Nashik, in Sessions Case No. 199/2016, has been convicted for the offences punishable under Section 302, 120-B and 504 r/w 34 of the Indian Penal Code and under Section 177 of the Motor Vehicle Act. For the offence punishable under Section 302, the applicant has been sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-.

4 Learned counsel for the applicant submits that the complainant-PW 1-Ajay Khanke, in his evidence, has stated that Bhavesh Patil (PW 7) had disclosed to him, that Yogesh Jadhav (original accused No. 1) had assaulted Anand (deceased) with a knife, which he had kept in his pant, whereas, according to PW 7-Bhavesh Patil, Yogesh Jadhav (original accused No.1) and his two other companions assaulted Anand. Learned counsel for the applicant submits that the evidence of PW 1-Ajay Khanke is contrary to what is

deposed to by PW 7-Bhavesh Patil. He submits that according to PW 7-Bhavesh Patil, Yogesh Jadhav (accused No. 1) picked-up one brick lying on the ground and threw it at Anand, however, he dodged it with his hand; thereafter, Yogesh Jadhav (accused No. 1) is stated to have pulled out a knife from his waist and assaulted Anand with the said knife, on his throat, chest and stomach. According to PW 7-Bhavesh Patil, another person having a beard, pulled out a knife from his waist and assaulted Anand with the said knife on his chest and stomach. Learned counsel for the applicant submits that there is a contradiction with respect to what was disclosed by PW 7-Bhavesh Patil to PW 1-Ajay Khanke and what is stated by PW 7-Bhavesh Patil, in his evidence with respect to the role of the applicant. He further submitted that the evidence of PW 7-Bhavesh Patil shows that he was called to the police station on 15th May 2015, pursuant to the notice issued under Section 160 of the Code of Criminal Procedure, at which time, the applicant was in police custody, having been arrested by the police, on 15th May 2022. He submits that in this view of the matter, the test identification parade conducted subsequently, after more than

35 days, loses its significance. Learned counsel submits that the applicant was on bail, pending trial and that he has not misused or abused the liberty granted to him.

5 Learned A.P.P opposes the application.

6 Perused the papers, in particular, the statement of PW 1-Ajay Khanke and PW 7-Bhavesesh Patil. According to PW 1-Ajay Khanke, Bhavesesh Patil (PW 7) had disclosed to him as to what had happened and how the incident had taken place i.e. how his brother Anand was assaulted. PW 1-Ajay Khanke has stated that Bhavesesh Patil (PW 7) disclosed to him that when he and Anand were walking towards Onkar General Provision Store, accused No. 1-Yogesh Jadhav alongwith his two companions, came triple seat on a motorcycle near the said Store; that the said three persons went ahead of Anand and again came back; at that time, accused No. 3-Rashtrapal Narode also came to the spot; that accused No. 1-Yogesh Jadhav asked Anand whether he wanted to assault him; that Anand tried to avoid talking

with Yogesh and moved away; at that time accused No. 1- Yogesh Jadhav, accused No. 3-Rashtrapal Narode and two other accused including the appellant, went near Anand and started assaulting him with fist and kick blows. He has stated that Bhavesh Patil (PW 7) further disclosed that he feared for his life, so he moved away; that he saw that after Anand fell down, accused No. 1-Yogesh Jadhav pulled out a knife, which was kept in his waist and inflicted 2-3 blows on his chest and that the other two persons also assaulted Anand with fists and kick blows.

7 PW 7-Bhavesh Patil, in his examination, has also attributed assault by the applicant with a knife on Anand alongwith Yogesh Jadhav. Thus, *prima facie*, there is contradiction with respect to the role attributed to the applicant.

8 Admittedly, the applicant was not known to PW 7-Bhavesh Patil. It appears from PW 7-Bhavesh Patil's evidence that on 15th May 2015, he was called to the police station, on the very day, the

applicant was arrested and was in the custody of the police. The evidentiary value of the said test identification parade would, therefore, be considered at the time, when the aforesaid appeal is heard finally. It is not in dispute that the applicant was on bail pending trial and that he has not misused or abused the liberty granted to him.

9 Having overall regard to what is stated 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 executing PR 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.

10 The application is disposed of accordingly.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.