

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

***CRIMINAL INTERIM APPLICATION NO.2183 OF 2022
IN
CRIMINAL APPEAL NO.683 OF 2022***

Jignesh Govindbhai Nandvan ...Applicant

Versus

The State of Maharashtra ...Respondent

Ms. Sakshi Mane a/w Mr. Shirish Sawant and Mr. Kiran Veram i/b
Rajeev Sawant and Associates, for the Applicant.

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

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

DATE : 4th AUGUST 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 aforesaid appeal.

3. The applicant alongwith co-accused vide Judgment and Order dated 30th May 2022, passed by learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.84 of 2013, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.7,000/- each, in default, to suffer rigorous imprisonment for 1 year;
- for the offence punishable under Section 364 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for 1 year;
- for the offence punishable under Section 201 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay fine of Rs.3,000/- each, in default, to suffer rigorous imprisonment for 6 months.

The aforesaid sentences were directed to run concurrently.

4 Perused the papers with the assistance of the learned counsel for the parties. PW1 – Shivani Singh had approached the Dahisar Police Station on 17th December 2012 at about 2:00 a.m. to lodge a complaint as against her two brothers-in-law i.e. accused Nos.1 and 4. Dahisar Police Station accordingly lodged an FIR as against accused Nos.1 and 4, for the offences punishable under Sections 324, 504, 506 r/w 34 of the Indian Penal Code (I.P.C). The allegations made by PW1 – Shivani in the said FIR were that the said accused physically assaulted her and hurled abuses at her. It appears that again on the very same day i.e. on 17th December 2012 at about 12:00 p.m, the First Informant i.e. PW1 – Shivani again visited the police station to enquire about the progress of her FIR. At the police station, PW1 – Shivani met PW2 – Bhavesh Shukla, brother of deceased (Mahesh Shukla) who had come to lodge a missing report of his brother. Pursuant thereto, PW1 – Shivani gave her supplementary statement stating therein, that accused Nos.1 and 4 and accused Nos.2 and 5 had kidnapped Mahesh Shukla. Pursuant thereto, the police added Section 364 r/w 34 of the I.P.C. to the FIR already registered

with the Dahisar Police Station. It appears that again on 20th December 2012 i.e. after 3 days of the lodging of the FIR, the dead body of Mahesh was found in a nala at Virar. Pursuant thereto, the police recorded the 2nd supplementary statement of PW1 – Shivani. In the said supplementary statement, for the first time PW1 – Shivani disclosed the name of the applicant as being present at the spot alongwith the other accused. Based on the supplementary statement and the finding of the dead body, the police added Sections 302 and 201 r/w 34 of the I.P.C. to the FIR. It is pertinent to note that there are 2 other alleged eye-witnesses to the incident that took place on 17th December 2012 at about 12:00 to 12:15 a.m. i.e. PW3 - Deepak Singh and PW4 – Ashish Dabhade. A perusal of the evidence of PW3 - Deepak shows that as far as the applicant is concerned, he is alleged to have threatened the people not to inform the police or that they too would have to face the same consequences. As far as PW4 – Ashish is concerned, he has stated that it was accused – Bachhu Singh who extended the said threats to the people. It is pertinent to note that the statement of PW3 - Deepak was recorded on 25th December 2012,

whereas, the statement of PW4 – Ashish was recorded on 1st January 2013. *Prima facie*, there is not only delay in recording their statement but there are discrepancies with regard to the exact role played by the applicant. Apart from the same, the name of the applicant has cropped up for the first time after 3 days of the incident i.e. on 20th December 2012, as reflected in the evidence of PW1 – Shivani. Apart from the said evidence, there is no corroborative evidence to connect the applicant with the alleged offences. It is not in dispute that the applicant was on bail pending trial and has not misused or abused the liberty granted to him.

5. Considering the evidence on record and what is stated hereinabove, 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.

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

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.