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

**INTERIM APPLICATION NO. 2321 OF 2021
IN
CRIMINAL APPEAL NO. 786 OF 2021**

Vinod Baba Sakpal	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

Mr. Siddharth Mehta a/w Mr. Omkar R. Chitale i/by Mr. Harshad Sathe for Applicant
Ms. J.S. Lohakare, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 18th October, 2022.

P.C.:

. This is an Application for suspension of sentence and releasing the Applicant on bail.

2. Applicant / Appellant has been convicted under Section 302 of IPC by the learned Additional Sessions Judge, Ratnagiri in Sessions Case No. 29 of 2020 and sentenced to suffer rigorous imprisonment for life.

3. Heard Mr. Siddharth Mehta, learned Advocate for Applicant and Ms. J.S. Lohakare, learned APP for State. Perused record.

4. Deceased Jagannath Babu Chavan was the uncle of Applicant. The date and time of the incident is 02.07.2017 between 9:15 to 9:30 a.m.

It is the prosecution case that, Applicant was addicted to liquor and was doing nothing. That, the deceased – his uncle had

been to the place of Applicant for residing prior to 10-12 days of the date of incident.

5. That, on 02.07.2017, one Mr. Onkar Chavan i.e. the cousin nephew of PW-1 informed him that, somebody from Village Kalkavane had phoned and gave information that, the deceased was lying outside the house. People from the village gathered at the scene of offence. That, there was marks of assault and beating on chest and neck of deceased and blood was oozing from the said wounds. Applicant was arrested on 02.07.2017 itself. Blood stained shirt of Applicant was seized by the prosecuting agency. After receipt of chemical analysis report, chargesheet was submitted. As noted earlier, trial Court by its impugned Judgment and Order, has convicted and sentenced Applicant.

6. Prosecution has propounded three major circumstances against Applicant i.e.

- (i) Last seen theory;
- (ii) Finding of blood stains of human origin on the shirt of Applicant at the time of his arrest on 02.07.2017 in the night and
- (iii) The stick allegedly used by Applicant was having blood stains on it.

7. At the outset, it is to be noted here that, the deceased was residing with Applicant in the house of Applicant and therefore

deceased was seen in the company of Applicant prior to commission of offence is not an unusual circumstance.

8. As far as finding of blood stains on the shirt of Applicant at the time of arrest is concerned, PW-5 Atmaram Jadhav, a rickshaw driver in his testimony has deposed that, on 02.07.2017 at about 09:00 a.m., Applicant approached him and told him that, his uncle had a fall and he had to take his uncle to Kajwad. PW-5 noticed that, Applicant was under the influence of alcohol and his clothes were soiled and therefore, he refused the request of Applicant.

PW-5 is the witness who at a very first instance had an opportunity to see Applicant immediately after 9:00 a.m. on 02.07.2017. However, he did not notice blood stains on the clothes of Applicant. Therefore, the circumstance of finding of blood stains on the shirt of Applicant at the time of his arrest *prima facie* creates doubt in the mind of this Court.

9. As far as the stick allegedly used by Applicant while assaulting the deceased is concerned, as per the evidence of panch witness, the same was found lying at the scene of offence itself and therefore, the said circumstance *prima facie* is of no avail for pointing out the guilt of Applicant towards commission of murder of Jagannath Babu Chavan.

10. In view of the above, during pendency of the present Appeal, the substantive sentence imposed upon Applicant can be suspended

and he can be released on bail.

11. Hence, the following Order:-

- (i) Applicant be released on bail in Sessions Case No. 29 of 2020 arising out of C.R. NO. 34/2017 registered with Alore-Shirgaon Police Station, District Ratnagiri on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount;
- (ii) After his release from jail and during pendency of Appeal, Applicant shall attend Alore-Shirgaon Police Station, District Ratnagiri on every first Monday of the month between 10:00 a.m. to 12:00 noon initially for a period of one year and thereafter on every first Monday of every third calendar month i.e. four times in a year.
- (iii) Applicant shall keep the I.O. informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (iv) In case of any two consecutive defaults in compliance with the conditions as stated above, Respondent will be at liberty to file application seeking cancellation of bail of Applicant.

12. Application is allowed in the above terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]