

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

**INTERIM APPLICATION NO.2377 OF 2021
IN
CRIMINAL APPEAL NO.164 OF 2020**

Husen Mainoddin Shaikh ... Applicant

Vs

The State of Maharashtra ... Respondent

Mr.Manas Gawankar i/b Mr.M.S.Mulla for the applicant

Mr.S.S.Hulke, A.P.P. for the State

**CORAM : S.S. SHINDE &
SURENDRA P. TAVADE, JJ.**

**RESERVED ON : DECEMBER 04, 2021
PRONOUNCED ON : JANUARY 10, 2022**

P.C.

. Heard.

2. The applicant has filed this application challenging the judgment and order passed by Additional Sessions Judge, Solapur in Sessions Case No.76 of 2017 whereby the applicant along with co-accused have been convicted for the offence punishable under section 302 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.20,000/- in default of payment of fine amount, to undergo further rigorous imprisonment for two years.

3. It is the case of the prosecution that deceased Moin was resident of Solapur. On 04.11.2016, deceased Moin had gone

to village at Kavadimalvadi, Taluka Haveli, Dist. Pune to see his wife Taslim. Taslim had delivered second child. Hence, deceased had been to her house. On 06.11.2016, deceased boarded truck in between 9.00 p.m. to 10.00 p.m. of Hatkeshwar Company at Kavadimal Toll Naka. The father in law of deceased Moin had come to see him off at Toll Plaza. On 07.11.2016, Moin did not reach home. Hence, his father, Rahim made enquiry with the father in law of his son. The informant came to know that deceased had boarded truck of Hatkeshwar Company. Hence, he went to the office of Hatkeshwar Company. He also saw CCTV footage of the truck. He went to the office of Hatkeshwar Company. He met the appellant. On inquiry, the appellant disclosed that the deceased had boarded truck but he left the truck at Dhaba of Kunjarwadi. The informant did not believe the story stated by the applicant. Hence, he rushed to the Loni-Kalbhor Police Station. On enquiry, it was revealed that the applicant along with the Co-Driver and cleaner assaulted Moin and threw his body near Shetphal. On the basis of the said information, crime came to be registered against the applicant and other accused. The applicant came to be arrested. Investigating Officer discovered the clothes of the deceased as per the information given by the applicant. Similarly cell phone of the deceased was discovered at the instance of the co-accused Shankar Chougule. Investigating Officer also revealed involvement of Manoj @ Manik Haralkar. After completion of investigation, charge sheet came to be filed against the applicant and co-accused.

4. Prosecution examined 22 witnesses. On going through the evidence, Trial Court convicted the present applicant for

the offence punishable under section 302 r/w section 34 of the Indian Penal Code rigorous imprisonment for life and to pay fine of Rs.20,000/-, i/d to undergo further rigorous imprisonment for two years. The applicant is also convicted for the offence punishable under Section 201 of Indian Penal Code and he is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, i/d to undergo further rigorous imprisonment for three months.

5. The learned counsel for the applicant submits that there is no cogent, cognate evidence against the applicant. The applicant is in Jail since last five years. There is no possibility of early hearing of the bail. It is submitted that even if the case of the prosecution is taken as it is, it can be said that the incident occurred on the spur of moment. There was no intention to kill the deceased Moin. Therefore, at the most offence under section 304 (Part II) can be made out instead of 302 of the Indian Penal Code. Therefore, it is prayed that the sentence be suspended and applicant be released on bail.

6. Heard the learned A.P.P. He submits that there is sufficient evidence against the applicant to prove the charge under section 302 of the Indian Penal Code against the applicant. The clothes of the deceased are recovered at the instance of the applicant. The said clothes were identified by the relative of the deceased. The Trial Court has rightly considered the evidence on record. Therefore, no case is made out for releasing the applicant on bail.

7. Perused the evidence of witnesses. It appears from the evidence of relatives of the deceased that on 06.01.2016

deceased boarded the truck of the applicant. On the way, there was quarrel between the applicant and the deceased wherein the deceased was assaulted. Dead body of the deceased was thrown out of the truck which was recovered subsequently at Shetphal. The crucial evidence against the applicant is that he produced the clothes. The cell phone of the deceased was also recovered at the instance of the co-accused, who was co-driver of the applicant.

8. It appears that the deceased was travelling in the truck of the applicant. The applicant and the deceased were not knowing each other prior to the incident. It appears that there was quarrel between the applicant, co-accused and the deceased, which resulted into the death of the deceased. So, there is a possibility that the offence may fall into Section 304 (Part-I) or (Part-II). The present appeal may not be heard within the short period. The applicant has already undergone sentence of five years. Therefore, the applicant is entitled for bail. With these, the following order is passed:

ORDER

- i. The applicant is hereby ordered to be released on bail on his furnishing a P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount with a direction to attend the hearing of this appeal regularly.
- ii. The observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present application. Hearing of the appeal stands expedited.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)