

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2845 OF 2022****IN****CRIMINAL APPEAL NO. 1141 OF 2022**

Mahadev Gajanan Patole

...Applicant/Appellant

V/s.

The State Of Maharashtra

...Respondent

Mr.Amit Mane, appointed Advocate for Applicant/Appellant.

Mr. Ajay Patil, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****DATE : 2nd DECEMBER, 2022.****P.C.:-**

. This is an application for suspension of sentence and releasing the Applicant/Appellant on bail.

2. Heard learned Advocate appointed by Legal Aid Committee to represent the Applicant/Appellant and learned A.P.P. for the Respondent-State. Perused notes of evidence.

3. The Applicant/Appellant has been convicted under Section 302 of Indian Penal Code (*for short "IPC"*) and is sentenced to suffer Life Imprisonment and to pay a fine of Rs.20,000/- by the learned Additional Sessions Judge, Mangaon, District : Raigad in Sessions Case No. 46 of 2019 by its Judgment and Order dated 27th April, 2022.

4. The prosecution case is based on circumstantial evidence.

The name of deceased is Nana Chavan. The date and time of incident is between 10.00 to 10.15 pm. of 15th April 2019 to 7.30 pm. of 16th April 2019.

The prosecution has propounded two main circumstances to indict the Applicant in the present crime. Those are last seen together and finding of blood stains on the clothes of the Applicant.

'As far as 'last seen together' theory propounded by the prosecution is concerned, the prosecution has examined PW-1 Ganpat Nikam. The said witness has stated that, the Applicant and deceased were workers at the stone crusher quarry and were residing in a vehicle at the said site. That, he saw Applicant and deceased together between 10.00 to 10.15 pm. on 15th April 2019. The dead body of deceased Nana Chavan was noticed at about 7.30 pm. on 16th April 2019. The alleged weapons used in the present crime i.e. an iron rod and a stone were found lying near the dead body itself. Prima facie it appears that, there is substantial gap between PW-1 seeing the deceased in the company of Appellant and finding of dead body of the deceased on the next day at about 7.30 pm.

As far as the other circumstance i.e. finding of blood stains on the clothes of Applicant are concerned, the said clothes were recovered from the cabin of the truck, which was stationed near the said site and prima facie it appears that, the Appellant and deceased used to reside in a

said vehicle. After pointing out the dead body to the Police by the witnesses, the Police must have taken search of the said truck and therefore subsequent recovery at the behest of the Applicant from the truck, according to us prima facie is a weak piece of evidence.

5. In view of the above, during the pendency of present Appeal, the substantive sentence imposed upon the Applicant/Appellant can be suspended and he can be released on bail.

Hence the following order :

- i) Applicant be released on bail in CR No.20 of 2019 registered with Mahad M.I.D.C. Police Station, on his furnishing PR bond of Rs.25,000/- with one or two local sureties in the like amount.
- ii) After his release from Jail, the Applicant shall attend Mahad M.I.D.C. Police Station, Dist. Raigad, on every first Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year and subsequently, on every first Monday of the every 3rd Month i.e. 4 times in a year, between 10.00 a.m. and 12.00 noon.
- iii) If the Applicant commits two consecutive defaults in complying with condition No.(ii) above, the provisions for cancellation of bail granted by this Court would attract.

6. Application is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)