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

**INTERIM APPLICATION NO. 2996 OF 2021
IN
CRIMINAL APPEAL NO. 99 OF 2019**

Pravin Tukaram Shinde] ... Applicant/Org.
Accused

V/s.

State of Maharashtra]
(at the instance of Lonand]
Police Station]... Respondent.

Ms Rebecca Gonsalvez i/b Dr. Yug Mohit Chaudhary for the
Applicant/Appellant
Mr. V.B. Konde-Deshmukh, APP for the Respondent – State.

**CORAM : S.S. SHINDE &
N.R. BORKAR, JJ.**

**RESERVED ON : 01.03.2022.
PRONOUNCED ON : 03.03.2022.**

ORDER (PER : N.R. BORKAR,J.)

1] The applicant has filed the appeal against the judgment and order dated 06.05.2017 passed by the Additional Sessions Judge, Satara in Sessions Case No. 65 of 2016. By the said judgment, the trial court convicted the applicant, who was the accused before the trial court, for the offences punishable under sections 302 and 365 of the Indian Penal

Code, 1860 (for short “IPC”) and sentenced as follows:

(a) Imprisonment for life for the offence punishable under section 302 of IPC; and

(b) Rigorous Imprisonment for seven years for the offence punishable under section 365 of the IPC;

2] By this application under section 389 of Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), suspension of substantive sentence during the pendency of appeal and consequently, release of the applicant on bail is sought.

3] We have heard the learned counsel for the applicant and the learned APP for the respondent/State.

4] According to PW-1 Rohini Madane and PW-4 Sindhu Bhandalkar on 10.03.2016, at about 10.30 p.m., while they were at their home, heard the dogs barking near the temple of Vetalbaba. They went in that direction and saw that the accused was assaulting the deceased. They asked the accused as to why he was assaulting the deceased. The accused replied to them that the deceased had borrowed Rs.1000/- from him and refusing to return the same. They told the accused that they would give him the money on the next

day and requested the accused to stop assaulting the deceased. According to PW-1 and PW-4, the accused was assaulting the deceased by means of iron fighter, due to which the deceased had sustained bleeding injuries on his face, chest and head.

5] According to PW-1 and PW-4, they came back to call other villagers. When they again went back to the spot with other villagers, neither the deceased nor the accused were there. They took search of the deceased. However, he was not found. On the next day in the morning, the deceased was found in injured condition in Salpe Ghat. The deceased was initially taken to Civil Hospital, Satara and from there shifted to Sasoon Hospital at Pune, where he succumbed to the injuries on 13.03.2016.

6] The learned counsel for the applicant submits that there is a delay in lodging the first information report. It is submitted that no one saw the applicant and the deceased together going to Salpe Ghat on 10.03.2016 after the alleged quarrel at 10.30 p.m. It is submitted that there is no evidence

as to when and by whom the deceased was found on 11.03.2016 at Salpe Ghat. It is submitted that the prosecution has not examined the Doctor, who treated the deceased. It is submitted that the deceased died three days after the alleged incident of 10.03.2016 and therefore, the possibility of some intervening cause having caused the death of the deceased cannot be ruled out. It is submitted that considering the above facts and circumstances, at the most, the applicant can be said to have committed the offence punishable under section 304 (II) of the IPC. It is submitted that the substantive sentence imposed by the trial court thus needs to be suspended and the applicant needs to be released on bail.

7] The learned counsel for the applicant, in support of his submissions, has relied upon the judgment in the case of ***Harish Kumar vs. State (Delhi Administration)***¹.

8] On the other hand, learned APP for the respondent/ State submits that PW-1 and PW-4 are the eye-witnesses to the incident which took place on 10.03.2016 at about 10.30 p.m. near Vetalbaba temple. It is submitted that thereafter

¹ AIR 1993 SC 973

the deceased was found in injured condition in Salpe Ghat. It is submitted that in the intervening night of 10.03.2016 and 11.03.2016, the accused was found standing near Salpe Ghat by PW-6 Vishal Kolpe. It is submitted that considering the overall facts and circumstances, the application needs to be rejected.

9] We have perused the evidence on record and more particularly, the evidence of PW-1, PW-4 and PW-6. According to PW-1 and PW-4, on 10.03.2016 at about 10.30 p.m., the accused assaulted the deceased by iron fighter near Vetalbaba temple due to which the deceased had sustained bleeding injuries on his face, chest and head. On the next day in the morning, the deceased was found lying in injured condition in Salphe Ghat. According to PW-6, he had seen the accused near Salphe Ghat, in the intervening night of 10.03.2016 and 11.03.2016. The deceased died due to head injury. Considering the evidence on record, we are not inclined to suspend the sentence and to release the applicant on bail. Hence, the Interim Application is rejected.

(N.R. BORKAR, J.)

(S.S. SHINDE, J.)