

VISHWANATH
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

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**CRIMINAL INTERIM APPLICATION NO.3004 OF 2021
IN
CRIMINAL APPEAL NO.1009 OF 2021**

Shailesh Kaushlendra Mishra

... Applicant/
Appellant

Vs.

State of Maharashtra & another

... Respondents

Mr.C.K. Talekar for the Applicant/Appellant

Mr.S.S.Hulke, APP, for Respondent – State

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

DATED: JANUARY 27, 2022

P.C.:

1. Heard the learned Counsel appearing for the applicant/appellant and the learned APP for the Respondent/State.

2. This application is filed by the applicant for suspension of sentence and to release him on bail during the pendency of the Appeal. The applicant inter alia came to be convicted for the offence punishable under section 307 of the Indian Penal Code and sentenced to suffer R.I. for life.

3. The learned Counsel appearing for the applicant/appellant invites our attention to the notes of evidence and in particular, the evidence of the injured witness PW2 Dhananjay. He submits that even if the deposition of PW2 Dhananjay is considered in its entirety, at the highest, it can be said that appellant was present at the spot of incident, however, no overt act had been attributed to the applicant/appellant. It is submitted that though it is stated by the Doctor that the injuries suffered by PW2 Dhananjay are grievous in nature, nevertheless, he was treated for only one day as an indoor patient. It is submitted that as per the prosecution case, though the alleged offence had taken place on 22nd June, 2015, nevertheless, the statement of PW2 Dhananjay had been recorded on 17th July, 2015. The prosecution has utterly failed to explain the delay in recording the statement of the injured witness PW2. The learned Counsel also invites our attention to the deposition of other prosecution witnesses and so also the medical evidence and submits that the applicant/appellant had not used any weapon in the alleged commission of offence or it is not the case of the prosecution that he was carrying any weapon to the place of occurrence. It is submitted that during the pendency of trial, the

applicant/appellant was on bail and he has not misused the bail granted to him.

4. On the other hand, the learned APP appearing for the Respondent – State invites our attention to the findings recorded by the trial Court so also the deposition of witnesses and other evidence and submits that the findings recorded by the trial Court are in consonance with the evidence on record and, therefore, this Court may reject the application.

5. We have appreciated the rival submissions with the able assistance of the learned Counsel appearing for the appellant and the learned APP appearing for the Respondent – State. We have carefully perused the deposition of witnesses, medical evidence and the other evidence brought on record by the prosecution. It is not in dispute that though the alleged offence had taken place on 22nd June, 2015, the statement of PW2 Dhananjay had been recorded belatedly on 17th July, 2015. No explanation is forthcoming from the prosecution as to why there was an inordinate delay in recording the statement of PW2 Dhananjay. In fact, PW2 Dhananjay in his deposition before the Court had stated that he

was in a position to speak since the evening of 23rd June, 2015.

Upon a careful perusal of the deposition of the evidence of PW2 Dhananjay i.e., the injured witness, there is no specific overt act attributed *qua* the appellant.

6. Nothing is brought to the notice of this Court that the appellant misused the bail granted to him during trial. In that view of the matter, keeping in view the overall evidence brought on record by the prosecution, *prima facie*, we find considerable substance in the contention of the learned Counsel appearing for the appellant. We are therefore inclined to suspend the sentence awarded vide the impugned judgment and order dated 20th November, 2021 and to release the applicant on bail. In the result, the following order is passed:

ORDER

(i) The substantive sentence imposed by the trial Court upon the applicant vide impugned judgement and order dated 20th November, 2021 in Sessions Case No.210 of 2015 is suspended during the pendency of the Appeal.

(ii) The applicant/appellant Shailesh Kaushlendra Mishra shall be enlarged on bail on furnishing PR. bond in the sum of Rs.25,000/- and one surety in the like amount.

(iii) The petitioner shall attend the concerned police station, in whose jurisdiction he is going to reside after his release, once in two months i.e., on the first Monday of the even month between 11.00 a.m. to 2.00 p.m.

(iv) The applicant/appellant shall deposit the passport, if any, with the concerned police station.

7. The Criminal Interim Application stands disposed of in the above terms.

(N.R. BORKAR, J.)

(S.S. SHINDE, J.)