

Santosh

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

**INTERIM APPLICATION NO. 3456 OF 2021
IN
CRIMINAL APPEAL NO. 110 OF 2022**

Rizwan Sarfaraj Shaikh

...Applicant/
Appellant

Versus

The State of Maharashtra

...Respondent

SANTOSH
SUBHASH
KULKARNI

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Mr. Satyajeet Rajeshirke, Appointed Advocate for the
Applicant.

Ms. M. M. Deshmukh, APP for the State.

**CORAM: SMT SADHANA S. JADHAV &
N. J. JAMADAR, JJ.**

DATED : 8th JUNE, 2022

ORDER :

1. The applicant/accused no.1, who has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 ("the Penal Code") and Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951 and sentenced to suffer imprisonment for life and pay a fine of Rs.10,000/-, with default stipulation, for the major offence punishable under Section 302 of the Penal Code, has preferred this application for suspension of sentence and to enlarge him on bail, during the pendency of the appeal.

2. The indictment against the applicant and co-accused Najma Ataulla Ansari (A2) and Najmun @ Rani Ataulla Ansari

(A3) was that on 8th August, 2016 the applicant Rizwan and one Jafar climbed over the roof of the house of Mohd. Shamim Ansari ("the first informant") to carry out the work of repair of the cable installed for illegally supplying the electricity in the slums. First informant's brother Akbarali confronted the applicant. An altercation ensued. The co-accused nos.2 and 3 came thereat. The applicant and co-accused started abusing and assaulting the first informant and his mother and brothers Akbarali and Bakarali (the deceased). The applicant took out a dagger (khanjir), which he had concealed in his waist, and stabbed deceased twice. The deceased fell down. He was shifted to Rajawadi Hospital but pronounced dead before admission. The first informant thus lodged report with Shivaji Nagar Police Station leading to registration of CR No.319 of 2016 for the offences punishable under Sections 302 and 323 read with Section 34 of the Penal Code and Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951.

3. After completion of usual investigation, the applicant and co-accused were sent for trial in Sessions Case No.806 of 2016. The learned Sessions Judge, Greater Bombay, recorded the evidence of eight witnesses for the prosecution, and the statement of the accused under Section 313 of the Code of Criminal Procedure. After appraisal of the evidence and

consideration of the submissions, the learned Sessions Judge was persuaded to return a finding of guilt against the applicant for the offences punishable under section 302 of the Penal Code and Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951, and sentence him, *inter alia*, to suffer imprisonment for life for the major offence punishable under Section 302 of the Penal Code. Co-accused Najma Ataulla Ansari and Najmun @ Rani Ataulla Ansari were, however, acquitted of the offences punishable under Sections 302 and 323 read with Section 34 of the Penal Code.

4. Being aggrieved, the applicant has preferred this appeal.

5. The instant application is taken out by the applicant to suspend the sentence and enlarge him on bail during the pendency of the appeal.

6. We have heard Mr. Rajeshirke, the learned Counsel for the applicant, and Ms. Deshmukh, the learned APP for the State. With the assistance of the learned Counsels, we have perused the material on record including depositions of the prosecution witnesses.

7. Mr. Rajeshirke urged that the applicant is in custody since the date of his arrest i.e. 8th August, 2016. In fact, on 8th August, 2016, the initial quarrel was between the informant party and one Mr. Shahid, the absconding accused.

Mr. Rajeshirke would urge that though the role of fatal assault has been attributed to the applicant yet there is an irreconcilable inconsistency in the evidence of the eye witnesses as regards the direction from which the assault was mounted. Having regard to the period for which the applicant has been in custody and the nature of the evidence, the applicant deserves to be released on bail, urged Mr. Rajeshirke.

8. We have perused the depositions of Mohd. Shamim Ansari (PW-1); the first informant, and Shabnam Ansari (PW-2); the alleged eye witnesses to the occurrence. The first informant Mohd. Shamim (PW-1) has deposed in clear and explicit terms that when the scuffle broke out, post altercation, the applicant took out a dagger (khanjir), which he had concealed in his waist, and stabbed the deceased twice, on the back. Shabnam Ansari (PW-2), the sister-in-law of the deceased, lends corroboration to the claim of Mohd. Shamim (PW-1). Shabnam (PW-2) testified to the fact that while the scuffle between her mother-in-law and the co-accused was going on, the applicant took out a knife and stabbed on the back of the deceased.

9. It would be contextually relevant to note the testimony of Dr. Balaji Falke (PW-4), the Autopsy Surgeon. Dr. Balaji Falke (PW-4) claimed to have noticed two stab wounds on the person of the deceased. In the opinion of Dr. Falke (PW-4), the two stab

injuries were sufficient in the ordinary course of the nature to cause death and they were possible by dagger (Article A). The medical evidence, thus, lends unflinching corroboration to the ocular account.

10. In the aforesaid view of the matter, we are afraid to accede to the submission on behalf of the applicant that there is an irreconcilable inconsistency in the evidence of the eye witnesses. Likewise, the fact that Mr. Shahid was not apprehended by police does not detract materially from the prosecution case against the applicant. There is adequate evidence which the learned Sessions Judge found worthy to sustain the guilt of the applicant for the offence punishable under Section 302 of the Penal Code.

11. Mr. Rajeshirke lastly urged that the applicant had just attained majority at the time of the occurrence. Thus, having regard to the age of the applicant, the sentence be suspended and applicant be enlarged on bail till the final disposal of the appeal. We are afraid to accede to this submission as well. It seems an innocent life of a young person was lost in a quarrel over a trivial issue. The fatal assault, *prima facie*, appeared to be unprovoked. We are thus not persuaded to exercise the discretion in favour of the applicant.

12. Hence, the application deserves to be rejected and, accordingly, stands rejected.

13. By way of abundant caution we clarify that the observations hereinabove are made for the purpose of determination of the prayer for suspension of sentence and they may not be construed as an expression of opinion on the merits of the appeal, which would be considered at the stage of final hearing.

[N. J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]