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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 3447 OF 2021
IN
CRIMINAL APPEAL NO. 1027 OF 2018

Abidali Kadarali Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sagar A Rane, Appointed Counsel for the Applicant.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.
DATE : 8th JULY, 2022

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant, vide judgment and order dated 13th April, 2018, passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.865 of 2014, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo further simple imprisonment for 6 months.

4 Perused the papers with the assistance of the learned Counsel for the applicant and the learned APP. It appears that two accused i.e. the applicant and co-accused - Rashid Mohammed Shafi Shaikh were chargesheeted in connection with the offence punishable under Section 302 read with 34 of the Indian Penal Code i.e. for causing the death of Shashi Makwana. After trial, co-accused i.e. Rashid Mohammed Shafi Shaikh was acquitted by the learned Additional Sessions Judge and the applicant was convicted as stated aforesaid. The prosecution case rests entirely on circumstantial evidence i.e. on last seen and recovery of a cutter blade at the instance

of the applicant.

5. As far as the last seen evidence is concerned, the prosecution has examined two witnesses i.e. PW-4 – Ashish Suresh Palgote and PW-5 - Gulam Abbas Dilwar Hussain Khan. A perusal of the evidence of PW-4 – Ashish shows that he had seen deceased - Shashi on 25th April, 2014, however, he has stated that he does not remember the exact date. He has stated that deceased Shashi and two other persons were taking drugs at the relevant time i.e. at about 8.30 a.m. and that, since he told them not to take drugs there, Shashi and two others went away. He has stated that on 26th August, 2014, at about 7.30 a.m. when he woke up, he saw Shashi lying in a pool of blood. The said witness has identified the applicant after almost four years i.e. during the course of trial in 2017. Admittedly, no test identification parade was held in the said case.

6. Similarly, PW-5 – Gulam, in his evidence has stated that on 26th August, 2014, he was present in the Pandal of Ganeshotsav

Mandal and that at about 2.00 a.m., the applicant came and demanded money for dinner from him. He has stated that he paid him Rs.50/-, after which, the applicant went away. He has further stated that he had seen both the accused and Shashi (deceased) in the same lane. He has further stated that on the next morning at about 6.30 a.m., he learnt that the dead body of Shashi was lying below the staircase of the building and there was a throat cut injury. Prima facie, we are doubtful that the evidence of PW-4 and PW-5 can be relied upon in support of the circumstance of last seen. As far as recovery of a cutter blade is concerned, learned Counsel for the applicant states that it was found at the instance of the applicant from the meter box and that the C.A. report with respect to the blood group is inconclusive.

7. The applicant is in custody since 26th August, 2014 and he has no antecedents.

8. Considering the aforesaid, the application is allowed and

the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or more local sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9. The application is accordingly disposed of.
10. All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.