

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1324 OF 2022
IN
CRIMINAL APPEAL NO. 287 OF 2022

Dattatraya S/o Gorakh Bhosale
Age : 35 Years, Occu. : Service,
R/o. Mangalwedha Police Line,
Tal. Mangalwedha, Dist. Solapur,
at present, in Jail

... Applicant.
(Original Accused No.1)

Versus

The State of Maharashtra

... Respondent.

...
Mrs. Charuta S. Deshmukh, Advocate for Applicant.
Mr. A. M. Phule, APP for Respondent - State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 19th JANUARY 2023.

ORDER (ABHAY S. WAGHWASE, J.) :

1. This is an application for suspension of sentence and enlargement on bail of accused pending appeal, as he is in jail in consequence to the judgment and order of conviction passed by the learned Trial Court for commission of offence under section 302 of the Indian Penal Code (IPC).

2. Learned counsel for the applicant would submit that conviction of applicant is in absence of trustworthy and reliable evidence. That, there was

no evidence for namesake to implead and further convict him for charge under section 302 of IPC. Learned counsel pointed out that admittedly case of prosecution is based on circumstantial evidence, but none of the circumstances pressed into service by prosecution were cogently and firmly proved and even prosecution failed to prove the complete chain of circumstances and as such, conviction was not at all warranted.

3. It is submitted that there are allegations that deceased Nitin, who has gone for Pilgrimage at Pandharpur on 02.07.2017 with other companions, had not returned back to his village. From 02.07.2017 till 05.07.2017, he had stayed in one *Math* of Bhojling Maharaj at Pandharpur. It is pointed out that, it is the case of prosecution that deceased Nitin had come in contact with accused at Pandharpur, as accused was on police bandobast duty for the said Pilgrimage. That, without any evidence prosecution has come with a case about accused informing deceased that they would meet and go for dinner. Such story built by prosecution is without any foundation. It is further pointed out that, in fact accused-applicant is son of aunt of deceased and therefore, there was no reason for him to commit his murder. At this stage, learned counsel submitted that motive is also patently missing from the entire case of prosecution. Involvement is merely on suspicion raised by brother of Nitin at Karjat Police Station. That, though it is alleged that there was recovery of vehicle and mobile, learned counsel pointed out that such evidence is not free

from doubt. That, alleged CCTV footage is also doubtful. Therefore, with such quality of evidence prosecution having not proved their case beyond reasonable doubt, it is submitted that learned trial Judge ought not to have considered such evidence and ought not to have held applicant guilty and convicted him.

Consequently, it is urged that in the light of above, when conviction is of 2022, regarding which appeal is filed, much more time would be required for hearing the appeal and hence, she prayed that sentence be suspended.

4. While opposing the bail application, learned APP pointed out that there is ample evidence on record suggesting that accused and deceased met at the *Math*. That, from 02.07.2017 to 05.07.2017, they both were constantly meeting each other. That, deceased had left the said *Math* to return to his village. However, he stopped midway because, according to prosecution as well as investigation revealed that, accused had told deceased that he would meet deceased and they would go for dinner together. Thereafter, deceased did not return and had met unnatural death with several injuries on his person. Investigating machinery could lay hand on incriminating material. Such evidence was placed before the court by prosecution and it was also relied by trial judge for holding accused guilty. Therefore, no case being made out for grant of bail, he prays to dismiss the application.

5. After hearing both sides, we have carefully gone through the evidence of in all 20 witnesses examined by prosecution before the learned trial Court. Admittedly this case is based on circumstantial evidence. Further, brother of deceased namely Pradeep also seems to have merely raised suspicion about involvement of accused.

6. As stated above, there is no direct eye witness and case is entirely based on circumstantial evidence. Theory of last seen together seems to have been pressed into service, but apparently doubt is raised about availability of motive. Therefore applicant has questioned the impugned judgment and order of conviction. The said judgment and order of conviction is of 2022. Accused is behind the bars since long. True it is that it would take long time for the appeal to be heard and decided. In the light of above discussion, we are convinced that it is a fit case for granting prayers raised before us.

ORDER

- i) Application stands allowed and disposed of.
- ii) The substantive sentence imposed against the applicant in Sessions Case No.19 of 2019 by learned Additional Sessions Judge, Shrigonda, District Ahmednagar, on 05.02.2022 stands suspended till the hearing and disposal of Criminal Appeal No. 287 of 2022.

- iii) The applicant Dattatraya s/o Gorakh Bhosale be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- iv) The applicant shall not commit any criminal activity.
- v) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearance.
- vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)