

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

***CRIMINAL INTERIM APPLICATION NO.454 OF 2023
(FOR BAIL)***

WITH

***CRIMINAL INTERIM APPLICATION NO.723 OF 2023
(FOR SUSPENSION OF SENTENCE)***

IN

CRIMINAL APPEAL NO.821 OF 2021

Rohit Sudhir Kamble

... Applicant

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Shirish Sawant a/w Mr. Jairaj Sawant i/b Rajeev Sawant and Associates, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.***

DATE : 27th JULY 2023

P.C. :

1. Heard learned counsel for the parties.
2. By the aforesaid interim applications, the applicant seeks suspension of his sentence and enlargement on bail, pending the

hearing and final disposal of his aforesaid appeal.

3. The applicant alongwith other co-accused, vide Judgment and Order dated 6th March 2021, passed by learned Sessions Judge, Kolhapur in Sessions Case No. 120 of 2014 has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 149 of the Indian Penal Code, to suffer life imprisonment i.e. remainder of their life and to pay fine of Rs.2,500/- each;
- for the offence punishable under Section 352 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 3 months and to pay fine of Rs.500/- each, in default to suffer further rigorous imprisonment for 15 days ;
- for the offence punishable under Section 147 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 2 years to pay fine of Rs.1000/- each, in default to suffer further rigorous imprisonment for 1 month;
- for the offence punishable under Section 148 r/w 149 of the

Indian Penal Code, to suffer rigorous imprisonment for 3 years to pay fine of Rs.2000/- each, in default to suffer further rigorous imprisonment for 1 month;

- for the offence punishable under Section 120B r/w 149 of the Indian Penal Code, to suffer life imprisonment i.e. remainder of their life and to pay fine of Rs.2500/- each.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers in particular the evidence adduced by the prosecution. On 2nd February 2014, two persons i.e. Nitin Shinde and Samir Khatik were murdered. According to the prosecution, the said two deceased and the accused belonged to different groups and as such, there was a dispute between the said two groups, on account of some money transaction. According to the prosecution, the incident took place on 2nd February 2014, when the deceased alongwith their friends were standing near the house of Samir Khatik. It is alleged that the accused persons came to the spot in a Tavera Car; that they were armed with weapons; and, that they assaulted Nitin Shinde and Samir

Khatik, at different spots, resulting in their death. It appears that the applicant has not been named in the FIR. It appears that out of 4 eye-witnesses, 3 eye-witnesses have neither named nor identified the applicant. As, it is the prosecution case, that PW7-Jameer Tahasildar, has identified the applicant in the Test Identification Parade (TIP), we perused the evidence of PW7-Jameer, which is on page 214 of Interim Application No.454 of 2023. A perusal of paragraphs 2 and 3 of the examination-in-chief of the said witness, reveals that the said witness has not named the applicant nor has he attributed any overt act to the applicant. In paragraph 4 of his examination-in-chief, PW7-Jameer, has stated that he was called to the Sub Jail, where the identification parade was held and that he identified Imran Mujawar and Rohit Kamble (present applicant) in the said TIP. It is pertinent to note, that no questions have been put to the said witness with respect to the TIP held, by the authorities in Sub Jail and how he identified the applicant nor has he attributed any overt act to the applicant. Admittedly, there is no other evidence, except what is stated aforesaid.

As noted above, the 3 other eye-witnesses have not named the applicant nor have they identified the applicant. It also appears that the Tahasildar, who was examined by the prosecution, as PW25 – Anant Gurav, has in his cross-examination admitted that he had not followed the procedure, as mandated for conducting the TIP. The applicant is in custody since February 2014, till date. The appeal is of the year 2021 and the same is not likely to come up for the hearing in the immediate near future.

5. Considering the evidence on record, *qua* the applicant as stated aforesaid, the applications are 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.25,000/- with one or two 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.

6. Both the aforesaid applications are allowed in the aforesaid terms and are accordingly disposed of.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.