

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

***CRIMINAL INTERIM APPLICATION NO.1654 OF 2023
IN
CRIMINAL APPEAL NO.423 OF 2023***

Kishor Dodappa Mane

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Veerdhawal Deshmukh, for the Applicant.

Mr. K. V. Saste, A.P.P for the Respondent – State.

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

DATE : 29th AUGUST 2023

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 appeal.

3. The applicant vide Judgment and Order dated 24th January 2023 has been convicted alongwith other co-accused as under:

— For the offence punishable under section 302 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 201 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/- each.

— For the offence punishable under section 364 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 120-B read with 34 of the Indian Penal Code, to suffer rigorous imprisonment of two years and to pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 392 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for three months.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. According to the prosecution, the incident took place on 12th January 2011 at about 5.30 p.m. It is alleged that Nitin Padavale (deceased) returned home from his agricultural land and at about 6.30 p.m. again went out and thereafter, did not return home. Pursuant thereto, Nitin's brother lodged a missing complaint on 14th January 2011. It is further alleged that on 21st January 2011, one police Patil informed the police about a dead body, lying near Waghzara, Kolhapur. The dead body was found lying in a valley at a depth of about 50 feet. It was found in a decomposed condition with no head attached to the body. Pursuant thereto, C.R. No. 7 of 2011 came to be registered with Shahuwadi Police Station, Kolhapur

alleging offences punishable under sections 302, 201 of the Indian Penal Code. During the course of investigation, applicant and other co-accused came to be arrested. It is the prosecution case that accused no. 1-Ravi Mane had a love affair with accused no. 7-Leena Padavle and that accused no. 1-Ravi Mane had hired accused nos. 5-Deelip Vyankatesh Dudhale and accused no. 6- Deelip Kambale to kill the deceased. It is alleged that pursuant thereto, there was a meeting organized in a hotel on 12th January 2011, which was attended by accused nos. 1-Ravi Ramesh Mane, 2-Vijay Raghunath Shinde, 3-Kishor Dodappa Mane (applicant), 5-Deelip Vyankatesh Dudhale, 6-Deelip Kambale and 9-Satish Bhimsing Vadar. According to the prosecution, accused nos. 2-Vijay Raghunath Shinde, 3-Kishor Dodappa Mane (applicant), 4-Aakash @ Akash Sitaram Waghmare, 5-Deelip Vynaktesh Dudhale and 6-Deelip Kambale brought Nitin at Warnanagar Kodoli, Borpadale Phata, Bambawade, Malkapur Road to Waghzara jungle; thereafter, accused nos. 2, 3, 5 and 6 took Nitin to the said jungle; that accused nos. 2, 3 and 5 held Nitin by his leg and accused no. 6 held Nitin's head. It is alleged that accused no. 6-Deelip

Kambale severed Nitin's head from his body and killed him and thereafter, the body was thrown in a valley. It is the prosecution case, that when the aforesaid accused reached Amrut Nagari Phata, post the incident, accused no.1-Ravi Ramesh Mane came alongwith accused no. 11-Manesh Sabana Kuchkoravi (on accused no. 1's motor cycle), and that accused no. 6 showed Nitin's head to accused nos. 1-Ravi Ramesh Mane and 6-Deelip Kambale. Thereafter, Nitin's head and all his articles were disposed of, by throwing the same in Warna river.

5. As noted earlier, the prosecution case rests on circumstantial evidence. There are no circumstances which the prosecution has presented as against the applicant, either in the form of recovery, last seen, extra judicial confession or recovery of blood stained clothes or C.D.R's. Learned APP when confronted with the same, does not dispute the same. It prima facie appears that what has been relied upon by the learned Judge to convict the applicant, are the contents of the memorandum statements of the accused recorded under section 27 of the Indian Evidence Act, which are clearly

inadmissible in law. It is not in dispute, that the applicant was on bail pending trial and that he has not misused the conditions of bail.

6. Considering the aforesaid evidence on record qua the applicant and the fact, that the applicant was on bail pending the trial, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail 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.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.