

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

***CRIMINAL INTERIM APPLICATION NO.2126 OF 2023
IN
CRIMINAL APPEAL NO.663 OF 2023***

Sagar Patil

...Applicant

Versus

1. The State of Maharashtra
2. Sameer Tukaram Kadam

...Respondents

Mr. Kedar J. Patil, a/w Mr. Jitesh Mundhwa, Ms. Sakshi Kadam, Ms/ Gargi Joshi and Mr. Pratik Tare, i/b Mr. Sudatta J. Patil, for the Applicant.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent – State.

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

DATE : 2nd AUGUST 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.4) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant (original accused No.4) alongwith other co-accused, vide Judgment and Order dated 16th March 2023, passed by learned Additional Sessions Judge, Chiplun in Sessions Case No. 18 of 2020, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w Section 120B and Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each, in default, to suffer simple imprisonment for 6 months;
- for the offence punishable under Section 201 r/w 34 of the Indian Penal Code, to suffer simple imprisonment for 3 years and to pay a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for 3 months.

4. Perused the papers. The prosecution case rests entirely on the circumstantial evidence. According to the prosecution, there was a dispute between the accused No.1 and Tukaram Kadam on 25th May 2015 (father of the first informant), as some branches of a Tamarind

tree were cut. It appears that the accused No.1 was enraged by the said conduct. It further appears that the accused No.1 had also constructed one padvi, near his house and wanted to put a tin-sheet roof over it and that Omkar Tukaram Kadam (deceased) had taken an objection for the same. Pursuant thereto, on 28th May 2015, the accused No.1 abused and threatened to kill all the family members of the first informant. Pursuant to which, the first informant – Sameer Tukaram Kadam (brother of the deceased) lodged a complaint with Lote Police Station. It is the prosecution case that on 31st May 2015, Omkar went missing from the house. The first informant – Sameer was informed by his father – Tukaram Kadam, that Omkar had gone on a motorcycle at about 2:00 p.m. and that he had not returned thereafter; and that his mobile number was coming switched off. On 1st June 2015 at about 7:00 a.m. when Sameer (first informant) returned home, his father informed him that Omkar had not returned on the previous day and that his mobile was also switched off. It appears that enquiries were made with the relatives and efforts were made to search Omkar. It appears that at about 11:00 a.m., the first

informant's elder brother – Sanjay, informed him on mobile phone that the Chiplun Police had found a motor cycle lying near the canal, on Chiplun Alore Road. Pursuant thereto, all the relatives of Omkar visited the spot and identified some of the articles that were found in a plastic bag, in particular the two mobile phones of deceased – Omkar. It appears that thereafter at about 3:30 p.m. the Chiplun Police informed the relatives of Omkar that one dead body of a male person was found near Enron bridge in Vashisti River and called them to identify the same. Accordingly, the dead body was identified by the family members, as being that of Omkar. It was noticed that Omkar's face was smashed and there were injuries on his neck. Accordingly, an FIR was lodged as against the accused No.1 alongwith his associates. After investigation, charge-sheet was filed and after a full-fledged trial, the learned Judge convicted the applicant alongwith two other accused, as stated aforesaid.

5. As noted earlier, the prosecution case rests entirely on the circumstantial evidence. As far as the applicant is concerned, it is

informed that there is recovery of his burnt clothes under Section 27 of the Evidence Act. From a perusal of paras 113 and 114 of the impugned Judgment and Order dated 16th March 2023, it appears that the applicant has essentially been convicted on the basis of the disclosure statement i.e. inadmissible portion. The learned Judge had observed that the applicant had voluntarily informed, how the act of crime was committed. Admittedly, the said portion of the statement could not have been relied upon, being inadmissible. Be that as it may, there were two disclosure statements made by the applicant. Admittedly, in one disclosure statement, nothing was recovered and in the second disclosure statement, the burnt clothes of the applicant, were recovered. Finding of the said burnt clothes *prima facie*, cannot be said to be incriminating. This is the only evidence as against the applicant. The applicant was on bail pending trial and has not misused or abused the conditions of bail.

6. Considering the aforesaid evidence as against the applicant and the fact, that the applicant was on bail pending trial and has not

misused or abused the conditions of bail, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid 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 the 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.