

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

***INTERIM APPLICATION NO.3181 OF 2023
IN
CRIMINAL APPEAL NO.720 OF 2021***

Ashok Mangesh Pujari

... Applicant

Versus

State of Maharashtra

...Respondent

Ms. Payoshi Roy i/b Dr. Yug Mohit Chaudhry, for the Applicant.

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

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

DATE : 6th NOVEMBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.2) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant alongwith another co-accused vide judgment and order dated 3rd December 2020 passed by the learned Additional

Sessions Judge, Kolhapur, in Sessions Case No.99 of 2018 has been convicted and sentenced as under:-

— for the offence punishable under Section 302 r/w. Section 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for three months.

4. Perused the papers. There is an eye-witness to the present case i.e. PW2 – Nanaso Aappaji Pujari. PW2 – Nanaso, has stated that the incident took place on 11th March 2018, post dinner. He has stated that when his brother - Aannaso (deceased) had gone to clean the utensils, the applicant alongwith original accused No.1 restrained him and as such a quarrel ensued between the two. He has stated that he alongwith Tanaji Pujari and Vitthal Pujari intervened in the said quarrel and tried to separate them, however, both the accused rushed towards Aannaso (deceased), assaulted Aannaso with fists and kick blows and thereafter both the accused banged Aannaso's head on the edge of cement concrete seating place, which was around the banyan

tree. PW2 – Nanaso has further alleged that pursuant thereto, Aannaso became unconscious and that all of them rescued Aannaso from the accused and immediately took him to Kolhapur for treatment. It appears that the doctors at Astar Hospital informed that there was internal bleeding because of the injury and therefore surgery was required. Thereafter, surgery was performed. It appears that as Aannaso's condition did not change i.e. he continued to be unconscious, he was transferred to CPR Hospital on 13th March 2018 at around 10:30 p.m. to 11:00 p.m. On the next day i.e. 14th March 2018 at 3:45 p.m., Aannaso succumbed to his injuries

5. Learned counsel for the applicant submits that the deceased was discharged from CPR Hospital against medical advise. She submits that admittedly, no weapon was used and the incident is an outcome of a sudden quarrel. She submits that the offence if any, would be a lesser offence and not an offence under Section 302 of the IPC. She submits that the applicant is in custody for the last 5 years and the appeal being of the year 2021, the same is not likely to come

up for the hearing in the immediate near future. According to the learned counsel for the applicant, even the treating doctor at CPR Hospital has not been examined by the prosecution with respect to the nature of injuries.

6. Learned APP does not dispute the aforesaid facts.

7. PW8 – Dr. Madhavi Sharasvate, the doctor who conducted the postmortem of the deceased has stated that the death was due to complications followed by head injury. Admittedly, no weapon was used in the assault by the applicant. *Prima facie*, it appears that the incident that took place, is an outcome of a sudden fight. The applicant is in custody for the last 5 years and there is no prospect of the appeal being heard in the immediate near future.

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 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.20,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in four 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. Interim Application is allowed in the aforesaid terms and accordingly disposed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.