

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 3374 OF 2022****IN****CRIMINAL APPEAL NO. 841 OF 2022**

Shankar Appaso Chhetri

...Applicant

V/s.

State Of Maharashtra

...Respondent

Dr. Yug Mohit Chaudhary a/w Ms. Madhavi Gomathieswaran for Applicant.
Mrs. M. M. Deshmukh, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 23rd MARCH, 2023

P.C.:-

. Applicant/Appellant - Original Accused No.3 has been convicted under Section 302 of the Indian Penal Code, by the learned Sessions Judge, Sangli in Sessions Case No.13 of 2015, by its impugned Judgment and Order dated 23.02.2022.

2. Admittedly, the motive behind commission of present crime was attributed to Original Accused No.1 – Shashikumar Shitole as the deceased on an earlier occasion during the heated arguments had slapped his mother -Sharda i.e. the accused No.2, insulted and humiliated her in public view. Shashikumar Shitole (Accused No.1) was furious to have revenge of the same. It is alleged that, on the date of alleged incident, all the three accused persons called the deceased - Prakash Ghadage out of his house

and assaulted him with knife and motorcycle chain. To save himself, deceased rushed to the house of Gopal Sutar, where he collapsed in his bathroom. PW-1 i.e. wife of deceased, PW-2 i.e. daughter of deceased are the eye witnesses to the incident. Perusal of testimony of PW-1 prima facie indicates that, she is silent about the presence of her daughter at the time of commission of offence by the accused persons. PW-1 has not identified the Applicant in her substantive evidence before the Court. She has not categorically stated that, the Applicant was also present and participated in the commission of offence.

3. Dr. Chaudhary, learned counsel for Applicant submitted that, the presence of Applicant at the scene of offence and his participation in the same is under shadow as PW-1, who is the star witness has not identified him during the course of recording of her substantive evidence. He submitted that, the presence of PW-8 has not been mentioned by PW-1. Prima facie we find substance in the same.

4. The Applicant is in jail since 06.10.2014. As per the instructions of Dr. Chaudhary, there are no antecedents at the discredit of Applicant.

5. In view thereof, during the pendency of present Appeal, substantive sentence imposed upon the Applicant can be suspended and he can be released on bail.

Hence, the following Order :

(i) During the pendency of the present Appeal, substantive

sentence imposed upon the Applicant is suspended.

(ii) Applicant be released on bail in FIR No. 59 of 2014 registered with Umadi Police Station, Taluka Jat, District Sangli, on his furnishing P.R. bond of Rs.25,000/- with one or two local sureties in the like amount.

(iii) After his release from Jail and during the pendency of present Appeal, Applicant shall attend Umadi Police Station, At Umadi, Taluka Jat, District Sangli, on every first Monday of the every 3rd Month i.e. four times in a year, between 11.00 a.m. and 1.00 noon.

(iv) If the Applicant commits two consecutive defaults in complying with condition No.(iii) above, in that event, the prosecution will be at liberty to file an Application for cancellation of bail.

6. Application is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)