

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.155 OF 2023
IN
CRIMINAL APPEAL NO.198 OF 2018

Rustam Sardar Khan ...Applicant/Org.Accused no.1.
Versus
The State of Maharashtra
At the instance of Malvani Police
StationRespondents.

Ms Rebecca Gonsalves, Advocate for the Applicant.
Mr V. B. Konde-Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 20 JANUARY 2023.

Order (Per R.N.Laddha,J.) :-

. This is an Application for suspension of sentence and release of the Applicant on bail.

2. The Applicant, who is original Accused No.1, was charged and tried along with co-accused for the commission of offences punishable under Sections 148, 302 r/w Section 149 of the Indian Penal Code and Sections 4 and 25 of the Arms Act. The trial Court, by the impugned Judgment and Order, convicted the

Applicant *inter alia* for the offence punishable under Sections 148 and 302 of the Indian Penal Code and sentenced him to suffer one year rigorous imprisonment and life imprisonment, on respective counts.

3. It is the case of the prosecution that on 27.8.2013, at 4.00 a.m., the Applicant, along with other co-accused, assaulted the deceased Ismail Gani with knives and committed his murder.

4. Ms Rebecca Gonsalves, the learned Counsel appearing on behalf of the Applicant, submitted that the co-accused Salman(original Accused No.4), Nazir (original Accused No.3) and Amir (original Accused No.2) had been released on bail by this Court by its orders dated 8.7.2021, 27.9.2022 and 19.12.2022, respectively. It is submitted that the Applicant has been attributed with a similar role as has been attributed to the co-accused, who are already enlarged on bail.

5. Further, it is submitted that the Applicant has been behind bars for more than nine years, and the Appeal is not likely to be taken up for hearing. It is submitted that the evidence of PW 1 and PW 2, the brothers of the deceased, and the evidence of PW 8-Reshma are not consistence with each other. It is submitted that

though a blood stained knife was allegedly recovered at the behest of Applicant, however, the blood group could not be determined. It is submitted that even otherwise, the so-called recovery of weapons is doubtful. It is submitted that the extra-judicial confession is a weak piece of evidence.

6. Mr V B. Konde Deshmukh, learned APP submitted that there is evidence in the form of the dying declaration and extra-judicial confession to connect the present Applicant with the alleged crime. It is submitted that the deceased was brutally murdered, and thus, the Application may be rejected.

7. It is not in dispute that the Applicant has been in jail for more than nine years. The Court has released the co-accused on bail against whom somewhat identical allegations are made. All three alleged eyewitnesses did not support the prosecution case. The evidence of prosecution witnesses is not consistence in regard to the oral dying declaration of the deceased. Considering these facts, the case for grant of bail is made out. The Application is accordingly, allowed in the following terms.

ORDER

- a) During the pendency of the present Appeal, substantive sentence imposed upon Applicant is suspended and he be released on bail, on execution of a

PR Bond of Rs.25,000/-, with one or two solvent sureties in the like amount, to the satisfaction of the learned trial Court.

b) The Applicant shall remain present before this Court as and when directed.

8. Interim application stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]