

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 398 OF 2023****IN****CRIMINAL APPEAL NO. 99 OF 2023**

Shivpati Subhoglal Patel

...Applicant/Appellant

Versus

State Of Maharashtra

...Respondent

Mr.Gaurav Parkar a/w Ms.Priyanka Pandey, Mr. Aniket Bangera
Advocate for Applicant/Appellant.

Mrs. M. H. Mhatre, APP for Respondent-State.

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

DATE : 16th FEBRUARY, 2023.

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P.C.:-

1. The Applicant/Appellant is convicted under Sections 302 and 307 of the Indian Penal Code and sentenced to suffer imprisonment for life by the learned Additional Sessions Judge, Mangaon, District Raigad in Sessions Case No. 22 of 2019 by its Judgment and Order dated 2nd December 2022.
2. Heard Mr. Parkar, learned Advocate for Applicant/Appellant and Smt. Mhatre, learned APP for Respondent/State. Perused record.
3. Perusal of evidence of eye witnesses *prima facie* indicate that, on the date and time of incident, the deceased Suryakant @ Suresh Kalgude along with Viram Uttekar had been to the scene of offence after receipt of call

from Bharat Kadam (PW-2), to resolve the dispute which had arisen between Bharat Kadam and Appellant. At that time, the Appellant tried to flee from the scene of offence from his vehicle/container. It *prima facie* appears that, the deceased, Viram Uttekar (PW-2) and Bharat M. Kadam (PW-1) tried to stop him. Deceased Suresh Kalgude pelted stone on the cabin of the vehicle of the Appellant. The deceased tried to stop the vehicle of the Appellant standing in front of road. However, the Appellant was frightened and tried to flee from the scene of offence and in the said melee he dashed the deceased with the said container.

4. Mr. Parkar learned Advocate for Appellant submitted that, even if the facts stated by witnesses are taken as true, at the most an offence under Section 304(2) of IPC would be made out and not an offence under Section 302 of IPC. *Prima facie* we find substance in the said submission.

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

Hence, following Order:-

(i) Applicant be released on bail in Sessions Case No. No. 22 of 2019 on furnishing PR bond of Rs. 25,000/- with one or two solvent sureties to make up the said amount.

(ii) After his release from Jail, Applicant shall attend Mahad MIDC Police

Station, District Raigad on every first Monday of every third month i.e. four time in every year till final decision of the present Appeal.

6. Application is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)