

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

***CRIMINAL INTERIM APPLICATION NO.418 OF 2022
IN
CRIMINAL APPEAL NO.591 OF 2021***

Dhanaji Vasantao Misal

..... Applicant-
Appellant

Vs.

The State of Maharashtra

..... Respondent

Mr. Aniket U. Nikam i/b Mr. Vivek N. Arote for the Applicant-
Appellant.

Mrs. P. P. Shinde, APP for Respondent-State.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 3 MAY 2023.

P. C.(Per Sharmila U. Deshmukh, J.)

1. By this application, preferred under section 389 of Criminal Procedure Code, the applicant seeks suspension of his sentence and enlargement on bail pending the hearing and final disposal of the aforesaid appeal.

2. *Vide* judgment and order dated 6/3/2021 passed by the learned Sessions Judge in Sessions Case No.120/2014, the applicant has been convicted and sentenced as under:

- for offence punishable under section 302 read with 149 of IPC to suffer life imprisonment i.e. remainder of his life and to pay fine of Rs.2,500/-;
- for offence punishable under section 352 read with 149 of the IPC to suffer rigorous imprisonment for three months and to pay fine of Rs.500/-;
- for offence punishable under section 147 read with 149 of the IPC to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-.
- for offence punishable under section 148 read with 149 of the IPC to suffer rigorous imprisonment for three years and to pay fine of Rs.2000/-.
- for offence punishable under section 120(B) read with 149 to suffer life imprisonment i.e remainder of his life and to pay fine of Rs.2,500/-

- All sentences to run concurrently.

3. Heard Mr. Aniket U. Nikam, learned counsel for the applicant and Mrs. P.P. Shinde, Learned APP for respondent-State.

4. The incident in question occurred on 2nd February, 2014 wherein two persons i.e. Nitin Shinde and Samir Khatik were murdered. It is alleged that the deceased and the accused were from different groups and there was dispute between these groups due to money transaction. It is alleged that on 2nd February, 2014 when the deceased along with friends were standing near the house of Samir Khatik the accused persons armed with weapons came there by Tavera car and assaulted Nitin Shinde and Samir Khatik at different places.

5. Learned counsel appearing for the applicant submits that the case of the prosecution rests on direct as well as circumstantial evidence. He submits that the witnesses examined by the prosecution has not named the applicant and the Applicant was

not identified in the Test Identification parade. He submits that PW-4-Omkar Ghorpade has not supported the case of prosecution and was declared hostile. As regards PW-6 Amit Hegade, he submits that the role attributed by PW-6 to the Applicant is that the applicant was present in the compromise meeting, which had taken place between the two groups. He further submits that the recovery of the blood stained knife is from a house which is accessible to everyone and ownership of the house is not proved.

6. Learned APP opposed the application.

7. Considered the submissions. The prosecution has examined 34 witnesses in order to prove its case. PW-1-Amar Shirse and PW-2-Sagar Sontakke, PW-4 Omkar Ghorpade, PW-5 Vishal Ghaste are the eye-witnesses, PW-3-Aruna Khatik saw the accused fleeing from the spot and PW-7-Jameer Tahasildar saw the accused running with weapons. A perusal of the evidence of aforesaid witnesses *prima facie* indicates that the Applicant has not been named by the witnesses. The alleged role attributed by PW-6 Amit Hegade is that the Applicant was present in the compromise

meeting which had taken place between the two warring groups.

Prima facie it appears that no overt act is attributed to the Applicant.

8. Having regard to the submissions of the learned counsel for the Applicant and considering the evidence on record, we are of the opinion that the applicant has made out a case for suspension of his sentence and enlargement on bail. The applicant has been arrested on 6/2/2014 and has been incarcerated for more than 9 years. The appeal is of the year 2021 and there is no likelihood of the appeal being heard finally in the immediate near future.

9. Hence we allow the application 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.

v) The application is allowed in the aforesaid terms subject to the Applicant depositing the fine amount as directed *vide* the impugned judgment and order dated 6/3/2021 passed by learned Sessions Judge, Kolhapur.

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

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.