

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

***CRIMINAL INTERIM APPLICATION NO.666 OF 2022
IN
CRIMINAL APPEAL NO.889 OF 2017***

Ram @Guddu Chichiriya @Chandwani ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ganesh K. Gole a/w Mr. Ateet Shirodkar and Mr. Viraj Shelalkar,
for the Applicant.

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

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 10th AUGUST 2023***

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant vide Judgment and Order dated 27th September 2017, passed by learned District Judge-2 & Additional

Sessions Judge, Kalyan in Sessions Case No.70 of 2013, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer life imprisonment and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 3 months;
- for the offence punishable under Section 342 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 1 month;
- for the offence punishable under Section 452 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 1 month.

All the sentences were directed to run concurrently.

4. Perused the papers. The prosecution case rests entirely on circumstantial evidence. According to the prosecution, the incident took place on 26th November 2012 at about 5:00 p.m. It is alleged

that when the wife and the daughter of the deceased descended from the staircase and were on their way to the market, the applicant entered the deceased's house and assaulted the deceased with a knife. According to the prosecution, PW4 – Kamini Chugh, daughter of the deceased, on hearing the cries of her father, immediately rushed home and saw her father lying in a pool of blood, pursuant to which, he was taken to the hospital. According to PW4 – Kamini and PW6 – Draupadi alias Duru Pande, the deceased disclosed to them that the applicant had assaulted him with a knife and thereafter, locked the door from outside.

5. Learned counsel for the applicant submits that the prosecution case essentially rests on the oral dying declaration allegedly made by the deceased to PW4 – Kamini and PW6 – Draupadi, which appears in the light of the evidence, to be doubtful. In this context, learned counsel for the applicant relied on the cross-examination of the witnesses, and in particular, the cross-examination of PW1 – Dilip Moolchandani. He submits that neither PW4 –

Kamini nor PW6 – Draupadi had disclosed the name of the applicant to the neighbours, soon after the incident, nor to the doctor, when the deceased was taken to the hospital. He submits that the evidence on record, on the contrary shows that PW4 – Kamini and PW6 – Draupadi were not at home and had gone to the market. It is further submitted that the evidence will show that it is the neighbours who lifted the deceased and called PW4 – Kamini and informed her of the incident of assault, pursuant to which, they came home. Learned counsel for the applicant further submitted that if the oral dying declaration as alleged was made by the deceased was true, certainly the clothes of PW4 – Kamini and PW6 – Draupadi, would have been blood stained, which is not the case. The applicant is in custody since 2012. The appeal is of the year 2017 and the same is not likely to come up for hearing in the immediate near future.

6. Considering the evidence on record and the fact, that the applicant is incarcerated for the last 10 ½ years, the application is allowed and the applicant's sentence is suspended and he is enlarged

on bail, pending the hearing and final disposal of the 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.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.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.