

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

**INTERIM APPLICATION NO.683 OF 2023
IN
CRIMINAL APPEAL NO.350 OF 2016**

Krishnatrao Ganapati Hajare
Aged about 40 years,
Presently at Kolhapur Central Prison
Otherwise a permanent resident
of Village Hasur, Taluka: Shirol,
District Kolhapur Petitioner.

Vs.

The State of Maharashtra
(Kavathemahankal Police
Station, Sangli) Respondents.

.....
Ms Shifa Khan i/by Dr.Yug Mohit Chaudhary, for the
Applicant.

Smt G.P. Mulekar, APP for the State.

.....

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

Date : 2 March 2023.

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Order (Per R.N.Laddha) :

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

2. The trial Court, by the judgment and order dated 01.04.2016 in Sessions Case No.198 of 2013, convicted the Applicant along with co-accused Shahaji Bhandare and Vithhal Hubale for the offences punishable u/Ss 302 r/w 34 of the Indian Penal Code and sentenced them to suffer life imprisonment.

3. It is the case of the prosecution that on 10.7.2013, all the Accused, in furtherance of their common intention, committed the murder of Umaji Shripati Bhanare.

4. In *Niranjan Singh and Anr. Vs Prabhakar Rajaram Kharote & Ors.*¹, it was observed that a detailed examination of evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications.

5. Keeping in view the above principle, we have heard Ms Shifa Khan, the learned Counsel appearing on behalf of the Applicant and Mrs G.P. Mulekar, learned Additional Public Prosecutor for the Respondent-State.

6. Miss Shifa Khan, the learned Counsel for the Applicant,

¹ (1980) 2 SCC 559.

pointed out that this is a second bail application, and the first bail application was rejected on 3.9.2018. After that, co-accused Shahaji Bhandare and Vithhal Hubale were enlarged on bail by this Court on 2.1.2023 and 8.2.2023, respectively. She submitted that the present Applicant is identically situated as the co-accused persons who are already released on bail. It is submitted that the Applicant has been languishing in jail for the last eight years.

7. It is submitted that the prosecution has deliberately not examined one Shankar Bandgar, the alleged eyewitness who took the deceased to the hospital and interacted with him after the incident. It is submitted that the learned trial Court has erred in relying on the testimony of PW 1 and PW 3 despite the delay of two days in disclosing the offence to the police. It is submitted that the dying declaration of the deceased was not recorded even though the deceased was well-oriented and speaking with the persons after the alleged offence. It is submitted that failure to record the dying declaration is fatal to the prosecution case.

8. It is submitted that the Autopsy Surgeon, in his evidence admits that the deceased had heavily consumed alcohol. It is

submitted that the deceased's state of intoxication contributed to his death, and it was not wholly on account of the injuries sustained by him.

9. It is submitted that the sticks by which the Applicant allegedly beat the deceased were not shown to the Autopsy Surgeon. The Autopsy Surgeon also admits that he had not opined that the injuries caused to the deceased were possible by means of the sticks as the same were not shown to him. It is submitted that in the absence of an Autopsy Surgeon's opinion as to whether the sticks could have caused the injuries inflicted on the deceased, a conviction u/s 302 can not stand. It is submitted that the Autopsy Surgeon admitted in his evidence that the forcible use of sticks would cause wheal marks, but there were no wheal marks on the body of the deceased. It is submitted that most of the injuries were over the back, limbs and chest and not aimed at any vital organs.

10. The learned Additional Public Prosecutor submitted that there is sufficient evidence against the Applicant. The version of the eyewitnesses gets corroboration from the medical evidence. It is submitted that the deceased was brutally murdered, and thus, the Application may be rejected.

11. We have carefully perused the record and the judgment of the learned trial Court.

12. It is not in dispute that the co-accused Shahaji Bhandare and Vithhal Hubale were already enlarged on bail by this Court. The learned APP does not dispute that the role of the present Applicant is identical to that of the co-accused persons who are released on bail by this Court. The Applicant has been behind bars for more than eight years. Considering these facts, the case for grant of bail is made out. The Application is, accordingly, allowed in the following terms.

: ORDER :

- i) During the pendency of the present Appeal, a substantive sentence imposed upon the Applicant is suspended, and he be released on bail on the 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.
- ii) The Applicant shall remain outside the revenue jurisdiction of the Taluka and place of the incident.

iii) The Applicant shall not give threats to the Complainant or other witnesses in the matter.

13. The interim application stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]