

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 954 OF 2023
IN
CRIMINAL APPEAL NO. 281 OF 2023

Subhash Dharma Pawar,	]
Age : 49 yrs, Occ : Nil.	]
R/at Shidarshan Colony, Belthiknagar,	]
Thergaon, Pune.	]..Applicant.
<u>Versus</u>	
State of Maharashtra.	..Respondent.

Mr. Suhas Rohile for the applicant.
Mrs. P. P. Shinde, APP for the respondent-State.

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

DATE : APRIL 26, 2023.

P.C. [Per Sharmila U. Deshmukh, J.] :

1. By this application filed under section 389 of the Code of Criminal Procedure, 1973, the applicant seeks suspension of his sentence and enlargement on bail pending the hearing of appeal. Vide judgment and order dated 17th January 2023 passed by the Sessions Judge, Pune in Sessions Case No.3 of 2018, the applicant was convicted for the offence punishable under section 302 of the Indian Penal Code, 1860 and

sentenced to undergo imprisonment for life and to pay a fine of Rs.1 lakh in default of payment of fine, to suffer simple imprisonment for one year.

2. Heard learned counsel for the applicant and learned APP for the respondent-State. Learned counsel appearing on behalf of the Applicant submits that the prosecution case rests on direct evidence. He would submit that perusal of the evidence of PW-5 and PW-6 -eye witnesses would show that the eye witnesses have turned hostile and there is no evidence to link the applicant with the alleged offence.

3. Learned APP opposed the application and submits that the applicant has been convicted for the serious offence of murder, punishable under section 302 of the Indian Penal Code, 1860 and is not entitled to be enlarged on bail.

4. Perused the evidence on record. Perusal of evidence of PW-4 (owner of the building where incident occurred) reveals that he had learnt about the quarrel which had taken place between Balu Adagale, Subhash Waghmare-the deceased and Subhash Pawar-the applicant and that the applicant had assaulted the deceased. He has further deposed that when

he reached the spot of incident after half of an hour Santosh Shinde, Shashikant Bhosale and the applicant were present at the spot. He has further deposed that the deceased was taken to the hospital and that he learnt that Subhash Waghmare was declared dead. The evidence of PW-4 *prima facie* indicates that the applicant was not present at the time of incident.

5. The evidence of Santosh Khandu Shinde (PW-5), who is also an eye-witness to the incident reveals that he was present on 28th September 2017 at the spot of incident; that, at that time quarrel took place between the deceased and the applicant; that he was not aware about the cause of dispute; that one person by name Adagale was going away from the place carrying bananas; that at that time the dispute started between said Adagale, the deceased and the applicant. The evidence of PW-5 indicates that during the dispute the applicant has assaulted the deceased Waghmare with one cement brick. In the cross-examination, PW-5 has stated that he has not informed the police that at the place where he was working there was a dispute; that he had not informed the police that he had witnessed the dispute between the deceased and the applicant and that he has not informed the police that the applicant had

assaulted the deceased with cement block.

6. The evidence of PW-5 indicates that the said witness has turned hostile, however, he has not been declared hostile. Neither is there any re-examination of this witness.

7. A perusal of the evidence of Baluram Adagale (PW-6) reveals that he has deposed that on the date of incident he had gone to buy bananas for his mother and on the way he saw the applicant and the deceased quarreling in the parking of the building of one Anil Waghmare. He has further deposed that he tried to intervene and pacify the deceased and the applicant; however the applicant picked up a stone and assaulted the deceased; that in the incident he suffered an injury to his forehead and thereafter, he left that place. He has further deposed that he learnt later, that the applicant had assaulted the deceased with cement block. The evidence of PW-6 reveals that he has deposed as to the quarrel which had taken place between the deceased and the applicant however he is not the eye-witness to the incident of actual assault.

8. Having regard to the above, i.e. the evidence on record, we are

of the *prima facie* opinion that the applicant has made out a case for suspension of his sentence and enlargement on bail. Hence, we pass the following order :

:ORDER:

- (i) The sentence imposed on the applicant in Sessions Case No.3 of 2018 by the Additional Sessions Judge, Pune shall remain suspended pending the hearing and final disposal of the aforesaid appeal.
- (ii) Pending the hearing and final disposal of the appeal, the applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.15,000/- with one or two sureties in the like amount
- (iii) 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;
- (iv) 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;

(v) 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.

10. The application is accordingly disposed of on the aforesaid terms.

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

[SHARMILA U. DESHMUKH, J.]

[REVATI MOHITE DERE, J.]