

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

***CRIMINAL INTERIM APPLICATION NO.708 OF 2023
IN
CRIMINAL APPEAL NO.162 OF 2016***

Jaywant Narayan Shinare	...Applicant (ori. Appellant/Accused No.2)
Versus	
The State of Maharashtra	...Respondent

Mr. Shirish Gupte, Senior Advocate, Ms. Pooja Sejpal and Ms. Akshata Desai, i/b Mr. Nitin Sejpal, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

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

DATE : 31st MARCH 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.2) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant alongwith other co-accused, vide Judgment and Order dated 20th January 2016, passed by learned Additional Sessions Judge, Raigad-Alibag in Sessions Case No. 98 of 2012, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 149 of the Indian Penal Code, to suffer life imprisonment and to pay a fine of Rs.5,000/- each, in default, to suffer further rigorous imprisonment for 2 months;
- for the offence punishable under Section 147 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.500/- each, in default, to suffer further rigorous imprisonment for 1 month;
- for the offence punishable under Section 148 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.500/- each, in default, to suffer further rigorous imprisonment for 1 month;

All the sentences were directed to run concurrently.

4. Learned senior counsel for the applicant seeks bail on the ground of parity. He submits that infact the applicant stands on a better footing than that of co-accused – Bharat Ravji Shinare, whose sentence has been suspended and who has been enlarged on bail vide order dated 1st February 2023. Learned senior counsel relied on the said order dated 1st February 2023, which is at Exhibit – C, on page 28 of the aforesaid application.

5. Perused the papers as well as the order dated 1st February 2023, enlarging the co-accused – Bharat Ravji Shinare (original accused No.1) on bail. According to the prosecution, it is co-accused – Bharat Shinare, who assaulted the deceased with a sword on his head. It is alleged that at the relevant time, the applicant who was armed with a sickle, assaulted the deceased on his legs. Admittedly, the recovery evidence has not been relied upon, inasmuch as, the weapon was not found to be blood stained, as reflected from the report of the Chemical Analyst. The cause of death, as reflected in the postmortem, is stated to be ‘Head injury, polytrauma, haemorrhage

and shock'. Admittedly, co-accused – Bharat Shinare, (original accused No.1), who allegedly assaulted the deceased with a sword on his head, has been enlarged on bail and his sentence has been suspended by this Court vide order dated 1st February 2023. The applicant like co-accused – Bharat Shinare, is in custody for almost 10 years. The appeal is of the year 2016 and the same is not likely to come up for the hearing in the immediate near future.

6. Considering the aforesaid and having regard to the order passed by this Court in the Interim Application filed by co-accused – Bharat Shinare, 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.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.