

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

*INTERIM APPLICATION NO. 824 OF 2023
IN
CRIMINAL APPEAL NO. 1001 OF 2021*

Ramprasad Ramlal Jaiswal @ Kalya ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Anil B. Khopade i/b Mr. Pritam Runwal for the Applicant

Mr. S. V. Gavand, Addl. P.P for the Respondent-State

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 6th DECEMBER 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 the aforesaid appeal.

3 The applicant vide judgment and order dated 12th October 2021, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, in Sessions Case No. 815/2014, has been convicted and sentenced as under:

- for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.2,000/- each, in default, to suffer rigorous imprisonment for 1 year;
- for the offence punishable under Section 120B r/w Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for 5 years and to pay fine of Rs.500/- each, in default, to suffer rigorous imprisonment for 1 year;
- for the offence punishable under Section 4/25 of the Arms Act, to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 500/- each, in default, to suffer rigorous imprisonment for 1 year;

All the aforesaid sentences were directed to run concurrently.

4 Perused the papers. The prosecution case rests on direct evidence i.e. there are three eye-witnesses to the case and also on circumstantial evidence i.e. recovery of *Khanjar* at the instance of the applicant. The eye-witnesses relied upon by the prosecution are PW1-Mohd. Ibrahim Abu Bakar Shaikh (brother of the deceased); PW13-Sanjay Shetty (friend of the deceased); and PW18-Namdeo Kirdat.

5 According to PW1-Mohd. Ibrahim Abu Bakar Shaikh (brother of the deceased), co-accused Mangesh and Mohsin held the deceased and Kalya i.e. the applicant and Sonu assaulted his brother with a knife. He has further stated that all the accused were assaulting his brother and as such, there were injuries on his face, leg, back and hand.

6 PW13-Sanjay Shetty has stated that when he reached the spot, he saw 3 to 4 persons assaulting his friend Farooq (deceased); that Sonu assaulted his friend on his abdomen by knife and also on his hand, back and cheek; Kalya (applicant) and Mohsin were also seen beating Farooq. He has further deposed that Sonu was holding a knife, to ensure that the people did not come forward to rescue Farooq (deceased). He has further stated that the applicant-Kalya was holding a dagger and that both, Kalya and Sonu were assaulting Farooq and that Mangesh and Mohsin had held Farooq.

7 PW18-Namdeo Kirdat has stated that the applicant gave a thumb on the chest of Farooq (deceased) and then assaulted the deceased with a *Khanjar* on his face and then on his hand. He has further stated that then Sonu (accused No.3) came there and that he too gave blows with a knife on the back and the body of Farooq (deceased) and that Mohsin and Mangesh had held Farooq.

8 There appears to be a slight discrepancy in the evidence as to where the blows were given by the applicant on the deceased.

9 Be that as it may, in addition thereto, the applicant is incarcerated in jail for about 9 years and 6 months and has recently suffered a Paralytic Stroke. The applicant's medical report has been placed before us by the learned Additional Public Prosecutor, evidencing the same. The said report is taken on record.

10 Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his 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.20,000/- with one or two sureties in the like amount;

ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his 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.

11 The application is accordingly disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.