

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

***CRIMINAL INTERIM APPLICATION NO.812 OF 2023
IN
CRIMINAL APPEAL NO.335 OF 2023***

Koyal Alias Muskan Ghanshyam Chaudhari
(Transgender Convict at present at
Nashik Central Jail)

...Applicant/Appellant
(Orig. Accused No.2)

Versus
The State of Maharashtra

...Respondent

Ms. Ranjan J. Rajgor, Appointed Advocate for the
Applicant/Appellant.

Mr. S. S. Pednekar, 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 seeks suspension of 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 24th December 2021, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay, in Sessions Case No. 305 of 2016, 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.10,000/- each, in default, to suffer rigorous imprisonment for 1 year.

If the fine amount is recovered, the said amount be paid to dependent of deceased i.e. wife as compensation under Section 357(1) of Code of Criminal Procedure, 1973.

4. Perused the papers. It appears that the incident in question has taken place on 4th January 2016 at about 11:00 p.m. It is alleged that the applicant alongwith other co-accused assaulted deceased –

Manda Kale by fist and kick blows. Pursuant to the said assault, deceased – Manda fell down and was taken to the hospital by his brother – Venkatesh and sister – Meena. It appears that the deceased was discharged on the very same day and subsequently succumbed to the injuries caused by fist and kick blows on 8th January 2016.

5. Learned counsel for the applicant submits that taking the prosecution case as it stands, the offence would not be one under Section 302 of Indian Penal Code but would constitute a lesser offence, inasmuch as, no weapon was used in the commission of the offence. She submits that the applicant is in custody since 7th January 2016 i.e. for about 7 years and the possibility of the appeal being heard in the immediate near future appears to be bleak. She submits that co-accused – Lokendra Bhagirath Singh Rathod alias Payal alias Luckky Sagar Verma's sentence has been suspended and he has been enlarged on bail by this Court vide order dated 10th January 2023.

6. Perused the order dated 10th January 2023 passed by this Court (Coram: Nitin W. Sambre & R. N. Laddha, JJ.), enlarging the co-accused - Lokendra, on bail. The role of the applicant, also a transgender appears to be similar to that of the co-accused who has been enlarged on bail.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and the applicant 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.10,000/- 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 the 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.

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

9. The aforesaid appeal to be tagged alongwith Criminal Appeal No.168 of 2022 preferred by co-accused - Lokendra Bhagirath Singh Rathod alias Payal alias Luckky Sagar Verma.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.