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*Uday S. Jagtap*

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

**INTERIM APPLICATION NO.930 OF 2020  
IN  
CRIMINAL APPEAL NO. 800 OF 2017**

Arun Raghunath Bhoir .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....  
Mr. Amit Icham for the applicant

Mr. K.V. Saste, APP for the respondent - State

.....

**CORAM : REVATI MOHITE DERE &  
PRITHVIRAJ K. CHAVAN, JJ.**

**DATED : 9<sup>th</sup> FEBRUARY, 2023.**

**P.C.**

1. In view of the 'not before' order passed by the Co-ordinate bench (Coram : A.S. Gadkari), the aforesaid interim application has been placed before this Court.

2. Heard learned Counsel for the parties.

3. By the Interim Application, the applicant – Arun Raghumnath

Bhoir seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal, being Criminal Appeal No.800 of 2017.

4. Learned Counsel for the applicant seeks suspension of the applicant's sentence and his enlargement on bail, pending his appeal, on the ground of parity. He submits that the co-accused – Bhalchandra Raghunath Bhoir, who had played a major role in the commission of offence was enlarged on bail by the Apex Court vide order dated 13.02.2020. He further submits that in respect of the other two accused i.e. Madhukar Bhoir and Ganesh Bhoir, their sentences have been suspended and they have also been enlarged on bail.

5. Learned APP does not dispute that the applicant is also entitled to be enlarged on bail on parity. On being questioned, he does not dispute the fact, that the applicant has no antecedents.

6. Perused the papers. The applicant, alongwith other co-accused vide judgment and order dated 25.07.2017, passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.62 of 2010, has been convicted for various offences. The maximum

sentence imposed for the offence punishable under Section 302 r/w Section 149 of the Indian Penal Code is life imprisonment.

7. Post the applicant's conviction and sentence, the applicant preferred the aforesaid appeal i.e. Criminal Appeal No.800 of 2017. This Court vide order dated 03.10.2017 was pleased to admit the said appeal. It also appears that the applicant had initially filed an application seeking suspension of his sentence and enlargement on bail, before this Court, however, the same was withdrawn, as the Court was not inclined to grant the relief as sought by the applicant. The said order is dated 10.07.2019, passed by this Court (Coram : B.P. Dharmadhikari & Mrs. Swapna S. Joshi, JJ).

8. The present application is the 2<sup>nd</sup> application filed in view of the change of circumstance i.e. the release of the co-accused – Bhalchandra Bhoir by the Apex Court vide order dated 13.02.2020 and grant of bail to two other co-accused, by this Court. Since, the Hon'ble Judges, who passed the earlier order, have since retired, we have heard the learned Counsel for the respective parties. The co-accused – Bhalchandra Bhoir is alleged to have fired a bullet from

his revolver on the deceased. The Apex Court whilst releasing to co-accused – Bhalchandra Bhoir has observed that the said accused is in custody for more than 10 years. Today, the applicant – Arun R. Bhoir seeks bail on the ground of parity, on the ground of delay in hearing the aforesaid appeal and on the ground that the applicant has also undergone more than 8½ years in custody. Learned Counsel for the applicant states that even today the matter is shown under caption of ‘un-ready appeal’.

9. It is the prosecution case, that the co-accused Madhukar R. Bhoir, Ganesh Bhoir and Mahendra Bhoir held the deceased (Samir) and also abused him, at which time co-accused – Bhalchandra Bhoir told the deceased (Samir) that ‘he will not keep him alive’ since he had started construction of a wall, despite warning him not to start any construction on the open plot. It is alleged that the said co-accused – Bhalchandra Bhoir fired from his revolver at the deceased, pursuant to which he succumbed to the same. So far as the applicant is concerned, no overt act has been attributed to him except that he abused the deceased. The Apex Court has granted bail to co-accused – Bhalchandra who fired at the deceased and this Court had granted bail to the co-accused Mahendra Bhoir and

Ganesh Bhoir, who held the deceased.

10. Learned APP does not dispute the fact that the role of the applicant stands on a far better footing than the said co-accused and that the applicant has been in custody for more than 8½ years.

11. Considering the aforesaid, the Interim Application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal i.e. Criminal Appeal No. 800 of 2017 on the following terms and conditions :-

### **ORDER**

(i) 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;

(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 of 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.

12. Interim Application No.930 of 2020 is allowed in the aforesaid terms and is accordingly disposed of.

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]