

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

***CRIMINAL INTERIM APPLICATION NO.1001 OF 2023
(Application for Bail)
IN
CRIMINAL APPEAL NO.206 OF 2023***

1. Rahul Dnyaneshwar Phokane
2. Pramod Dnyaneshwar Phokane ...Applicants
Versus
The State of Maharashtra ...Respondent

Mr. Aniket U. Nikam i/b Mr. Amit Icham, for the Applicants.

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

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 5th JULY 2023***

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of their aforesaid appeal.
3. The applicants vide Judgment and Order dated 6th January 2023, passed by learned Sessions Judge, Nashik, in Sessions Case No.

151 of 2020, have been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.3,000/- each in default, to undergo further simple imprisonment for 3 months;
- for the offence punishable under Section 201 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2,000/- each in default, to undergo simple imprisonment for 3 months.

Both the aforesaid sentences were directed to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the applicants and the learned APP. According to the prosecution, the incident took place on 30th November 2019 prior to 7:00 a.m. It is alleged by the prosecution that one Rohidas informed PW1 – Kailas on phone that his cousin – Dnyaneshwar and uncle – Kashinath have been murdered in the farm house. Pursuant thereto, PW1 – Kailas visited the farm house and found both – Dnyaneshwar

and Kashinath lying dead in a pool of blood with serious injuries on their head. It also appears that all the accused, including the applicants, PW8 – Mirabai (wife of Dnyaneshwar), PW9 – Dipali (wife of Rahul) and some other villagers were also present in the farm house, at the relevant time. Pursuant thereto, PW1 – Kailas went to Wadi Warhe Police Station, Nashik Station and lodged an FIR as against unknown persons. During the course of investigation, the applicants and another co-accused came to be arrested. After a full-fledged trial, one of the accused was acquitted and the present applicants were convicted as stated aforesaid. The prosecution case rests entirely on circumstantial evidence. It appears that the only circumstance as against the applicant No.2 - Pramod Phokane is recovery of a pan and metallic leaf from a lake at the behest of the applicant No.2 – Pramod. Admittedly, the said pan and metallic leaf were not blood stained. As far as the applicant No.1 – Rahul Phokane is concerned, it appears that there are no circumstances brought on record by the prosecution to connect the said applicant with the alleged crime.

5. Learned APP does not dispute the aforesaid.
6. It is not in dispute that the applicants were on bail pending trial and that they have not misused or abused the conditions of bail.
7. Considering this is the only evidence on record as stated aforesaid, this is a fit case to allow the application and suspend the sentences of the applicants and enlarge them on bail, pending the hearing and final disposal of their Appeal, on the following terms and conditions :-

ORDER

- i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/ each- with one or two sureties in the like amount;
- ii) The Applicants shall report to the trial Court, once in four months on the day/date specified by the trial Court, till their Appeal is finally disposed of;

iii) The Applicants 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.