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

**CRIMINAL INTERIM APPLICATION NO. 997 OF 2023
IN
CRIMINAL APPEAL NO. 1288 OF 2019**

Abhijit Baban Pawar

... Applicant

vs.

The State of Maharashtra

... Respondents

Mr. Aniket U. Nikam i/b.Mr. Piyush Toshniwal, for the Applicant.

Mr. J.P. Yagnik, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 30th NOVEMBER 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 21st August 2019, passed by the learned Sessions Judge, Satara in Sessions Case No. 139 of 2014, has been convicted and sentenced

alongwith other co-accused as under:-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 1,000/- in default, to suffer simple rigorous imprisonment for one month;
- for the offence punishable under Section 307 r/w section 34 of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- in default, to suffer rigorous imprisonment for one month.

Both the aforesaid sentences were directed to run concurrently.

4. Learned counsel for the applicant submits that the applicant is in custody since 13th June 2014 for about 9 and ½ years. He submits that although 8 accused were prosecuted in the said case, 6 accused i.e. original accused nos. 1 to 6 were acquitted in the said case and only applicant-Abhijeet Baban Pawar and co-accused-Sagar Maruti Karve were convicted by the learned judge as stated aforesaid. He further submitted that with

respect to the incident dated 12th June 2014, there was a cross case filed from the applicant's side, which ended in the acquittal of the accused therein. He submits that although the accused was convicted in the present case, the evidence on record would show that the prosecution case suffers from several infirmities. He submits that although 8 accused are alleged to have assaulted the deceased-Vikas Prakash Pawar by gupti and others by Dandas, the evidence of the Doctor shows that the deceased had sustained 5 stab injuries and there were no other injuries, caused allegedly by Dandas. He further submits that original accused no. 8-Sagar Karve, is alleged by one of the four eye-witnesses to have also assaulted the deceased with a gupti, however, the said accused has been granted bail by this Court vide order dated 17th August 2021.

5. Mr. Yagnik, Learned APP opposed the bail application. He submitted that there were 4 eye-witnesses, who have consistently named the applicant, as having stabbed the deceased with gupti.

6. Perused the papers. The incident is alleged to have taken place on 12th June 2014. It appears that there was some quarrel

in the marriage procession which took place on 12th June 2014, which was stopped with the intervention of the villagers. It appears that thereafter, Vikas(deceased) and eye-witness left the procession and proceeded towards Satara. It appears that they all stopped near a tin shed, at a distance of ½ km, from village Dabewadi. The applicant alongwith co-accused are alleged to have come to the spot, armed with weapons, such as gupti and wooden dandas, that the applicant and Sagar Karve are stated to have assaulted and stabbed the deceased with gupti and the other co-accused with Dandas. PW-1 – Amol Shivdas Chougule is also alleged to have sustained injuries in the said incident. With respect to the said incident dated 12th June 2014, there was a cross FIR registered from the applicant's side as against the deceased and the eye-witnesses.

7. It appears that there are 4 eye-witnesses to the alleged incident of assault i.e. PW1- Amol Shivdas Chougule, PW-2- Vasant Kashinath Gaikwad, PW 3-Dhondiram Tanaji Shingade PW 6-Ajay Nalawade. PW 1-Amol Shivdas Chougule has named the applicant - Sagar Karve. He has deposed that the applicant

assaulted the deceased-Vikas Pawar with gupti and the other accused with dandas. As far as PW 2-Vasant Kashinath Gaikwad is concerned, the said witness in his evidence has stated that it was the applicant and Satish Vitthal Mane who assaulted the deceased with gupti. He has named applicant and co-accused-Sagar Karve as being present and assaulting the deceased with gupti and the other co-accused with dandas. It appears that there is recovery of gupti and blood stained clothes from the accused, however, the CA report is inconclusive.

8. The Trial Court after considering the evidence of the eye-witness acquitted some of the co-accused i.e. the original accused nos. 1 and 6 on the premise, that the version of the eye-witnesses was doubtful. We have perused the evidence of PW 10-Dr. Atul Vitthal Lipare. He has stated only about 5 stab injuries seen by him. The said witness did not note any other injury apart from the same. It is the prosecution case that apart from being stabbed by the applicant and co-accused-Sagar Karve, deceased was assaulted by dandas by 6 persons. There are no corresponding injuries caused by dandas.

9. Considering the aforesaid evidence and having regard to the fact, that co-accused - Sagar Karve who is also alleged to have assaulted deceased - Vikas Pawar with a gupti has been enlarged on bail and also having regard to the fact, that the applicant is incarcerated from 13th June 2014 for about 9 and ½ years, 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 four 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.

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

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)