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

**INTERIM APPLICATION NO. 1183 OF 2023
IN
CRIMINAL APPEAL NO. 312 OF 2023**

Devu Soma Khadke ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Vinod Kashid Advocate for the Applicant
Mr. S. S. Pednekar, APP for the State

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

DATE : 6th JUNE 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 his aforesaid Appeal.
3. The Applicant vide Judgment and Order dated 2nd March 2023

passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No. 209 of 2020, has been convicted along with co-accused Chintaman Devu Khadke as under:

For the offences punishable under Sections 302, 324, 341, 504, 506 read with 34 of the Indian Penal Code. For the offence punishable under Section 302 read with 34 of the Indian Penal Code to suffer imprisonment for life.

Similarly, imprisonment has also been awarded for the other offences punishable under sections 324, 341, 504 and 506 of the Indian Penal Code.

All the aforesaid sentences have been directed to run concurrently.

4. Learned counsel for the Applicant submits that the Applicant is in custody since 4th February 2020. He submits that even if the prosecution case is taken as it stands, no offence under Section 302 of the Indian Penal Code is disclosed qua the Applicant having regard to

the medical evidence, i.e. evidence of P.W. 8 Dr. Nisha Pande. He submits that at the highest, prosecution evidence would show that the Applicant intended to give a thrashing to the deceased and that it was not his intention to cause death. He further submitted that the evidence of P.W. 8 Dr. Nisha Pande would reveal that almost all the injuries except one are on the upper and lower limbs and the back and that the said injuries are stated to be simple in nature. He submits that only one injury is stated to be the cause of death, i.e. an internal injury, under scalp contusion of 3 cm X 2 cm over left parietal region. He submits that there was no fracture of the head and that the evidence shows that the Applicant allegedly assaulted the deceased Nilesh with a stick weighing approximately 20-25 Grams.

5. Learned APP opposed the Application.

6. Perused the papers, in particular the evidence of P.W. 1 Dashrath Hambir, P.W. 2 Asha Khadke and P.W. 8 Dr. Nisha Pande. As far as P.W. 2 Asha Khadke is concerned, she has turned hostile. As far as P.W. 1

Dashrath Hamir is concerned, he has stated that the Applicant and co-accused Chintaman Khadke were against the relationship of the Applicant's daughter Asha with Nilesh (deceased) and as such, on the day of the incident, Nilesh was stopped, and chilly powder was thrown at him by the co-accused Chintaman; that thereafter, Nilesh was assaulted by the Applicant with a wooden stick and by the co-accused Chintaman, with an iron rod. A perusal of the medical evidence i.e. evidence of P.W. 8 Dr. Nisha Pande shows that all the injuries sustained by Nilesh were simple in nature i.e. abrasions and contusions and that there was one internal injury under the scalp i.e. under scalp contusion over the left parietal region. In her cross-examination, P.W. 8-Dr. Pande has stated that all the external injuries were simple in nature and that the said injuries were possible by the impact of a hard and blunt object and was also possible if a person fell from the bike while riding the same. P.W. 8-Dr. Pande has further in her cross-examination, stated that she had given her opinion that the injuries were possible with a stick and iron rod without looking at the articles. She has further stated that the length of the stick with which

the Applicant allegedly assaulted was approximately 1 Meter having weight of approximately 20-25 Grams.

7. Appeal has been admitted by this Court vide order dated 23rd March 2023, and the same is not likely to be heard in the near future.

8. Considering the aforesaid, evidence on record, 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. 25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in Six 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.