

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

***INTERIM APPLICATION NO.1185 OF 2023
IN
CRIMINAL APPEAL NO.74 OF 2023***

Sakharam Vishram Mandhare

...Applicant
Original Accused No.2

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Sharad Ghadge a/w Mr. Chinmay Sharma and Mr. Naresh Jadhav,
for the Applicant.

Mrs. P. P. Shinde, A.P.P for the Respondent No.1 – State.

Mr. Rakesh S. Patil, for the Respondent No.2/Complainant.

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

DATE : 13th OCTOBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.2) seeks suspension of his 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 29th November 2022 passed by the learned Additional Sessions Judge, Mangaon, Raigad in Session Case No.1 of 2021 has been convicted as under:

- for the offence punishable u/s. 302 r/w. Section 149 of the Indian Penal Code, to suffer life imprisonment and to pay fine of Rs.50,000/- each, in default, to suffer rigorous imprisonment for one year;
- for the offence punishable u/s. 341 r/w. Section 149 of the Indian Penal Code, to suffer simple imprisonment for one month;
- for the offence punishable u/s. 143 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for six months;
- for the offence punishable u/s. 147 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for two years;
- for the offence punishable u/s. 148 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for three years;
- for the offence punishable u/s. 120B of the Indian Penal Code, to suffer rigorous imprisonment for two years;

All the aforesaid sentences were directed to run concurrently.

— The applicant alongwith other co-accused was however acquitted of the offence punishable under Section 188 of the Indian Penal Code and under Sections 37(1)(a) r/w 135 of the Maharashtra Police Act.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that similarly placed co-accused sentence have been suspended and they have been enlarged on bail. Learned counsel relied on the orders, which are annexed to the application at Exhibit – ‘C’ colly.

5. Learned APP opposes the application. She submits that no doubt the role of the applicant is similar to that of the other co-accused who have been enlarged on bail, however, the applicant has made a confession to PW4 – Deepak Jadhav, Police Hawaldar, prior to the registration of the FIR.

6. Learned Counsel for the respondent No.2 also vehemently opposes the grant of bail. Learned counsel relied on the evidence of PW2 – Paresh Mhaske (eye witness) and the evidence of PW4 – Deepak Jadhav, Police Hawaldar.

7. Perused the papers as well as the orders enlarging other co-accused on bail. The incident is alleged to have taken place on 31st May 2020 at around 5:00 p.m. It is the prosecution case, that all the accused including the applicant assaulted Ganpat Mandhare with weapons i.e. bamboo sticks, stones, fists and kick blows and axe, pursuant to which, Ganpat expired. As far as the applicant is concerned, he is alleged to have assaulted Ganpat with a bamboo stick. It is not in dispute that co-accused – Nana, who is also alleged to have assaulted with a bamboo stick and co-accused - Kailas and Vilas with stones and fists and kick blows, have been enlarged on bail by this Court vide separate orders. The said orders are annexed to the application at Exhibit – ‘C’ colly.

8. Although, learned counsel for the respondent No.2 submits that the applicant had made a confession before PW4 – Deepak Jadhav, Police Hawaldar, a perusal of the evidence of PW4 – Deepak Jadhav shows that the applicant and Vitthal Mhaske had gone to the police station. PW4 – Deepak Jadhav in his evidence has stated that Vitthal Mhaske and Sakharam (applicant) told that they have dealt danda blow on the head of Ganpat Mandhare and therefore, it is not the prosecution case that the applicant himself made any confession.

9. Considering the role of the applicant, the weapon allegedly used by him and what is stated aforesaid and the fact, that the applicant is in custody since 2020, 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 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 three 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.