



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

**INTERIM APPLICATION NO. 1684 OF 2023
IN
CRIMINAL APPEAL NO. 585 OF 2023**

Dhawala Kalu Sonawane
Residing at Umbermal,
Taluka Shahpur, District: Thane.

... Applicant

vs.

The State of Maharashtra
(Through Kasara Police Station)
District: Thane.

... Respondent

Mr. Pandit Kasar, for the Applicant.

Mr. V.B. Konde Deshukh, A.P.P for the State.

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

DATED : 10th OCTOBER, 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 9th January 2023, passed by learned Additional Sessions Judge, Kalyan, in Sessions Case No. 28 of 2017, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, and sentence to suffer imprisonment for life and to pay fine of Rs.5,000/- in default, to suffer simple imprisonment for one month;

4. Perused the papers. The prosecution case rest on direct evidence. The prosecution in support of the case has examined three eye-witnesses to the alleged incident of assault, which took place on 1st July 2016 i.e. PW 1-Shankar Bendkule, PW 4-Sunita Nivrutti Pichad and PW 7- Gangubai Rajaram Bande. It is the prosecution case, that the deceased- Sandip @ Gotya and applicant - Dhawala Kalu Sonawane are related in as much as the wife of the deceased is the sister of the applicant's wife. Admittedly, PW 1- Shankar Bendkule who was allegedly present at the spot, has turned hostile, and, as such has not supported the

prosecution case. As far as PW 4- Sunita Nivrutti Pichad and PW 7- Gangubai Rajaram Bande are concerned they have stated that there was a quarrel between the applicant and deceased-Sandip@Gotya, pursuant to which applicant assaulted deceased-Sandip@Gotya with a koyta on his neck. A perusal of the cross-examination of PW 7- Gangubai Rajaram Bande, shows that the applicant tried to resolve the dispute/quarrel between the deceased and his wife and that in the said quarrel the applicant assaulted deceased-Sandip with koyta. Admittedly, the wife of the deceased though an eye-witness, has not been examined. Learned counsel for the applicant submitted that the offence, if any, would not be one under section 302, but would be a lesser offence, having regard to the peculiar facts of the case. He submits that the applicant is in custody for the last 8 years.

5. We have perused the evidence. Considering what is stated by the prosecution witnesses in their cross-examination i.e. that the assault took place after a quarrel and the fact, that the applicant is incarcerated for the last 8 years, and has no antecedents, 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 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.

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

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)