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

**INTERIM APPLICATION NO. 1208 OF 2023
IN
CRIMINAL APPEAL NO. 134 OF 2019**

Vilas Dhondibhau Kumkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Manoj Badgujar advocate for the applicant

Mrs. P. P. Shinde APP for the State

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

DATE : 18th JULY 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 3rd May 2016 passed by the Additional Sessions Judge, Khed-Rajgurunagar in

Sessions Case No. 260 of 2014 has been convicted and sentenced as under:

— for the offence punishable under section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for four months.

— for the offence punishable under section 201 of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs. 2000/-, in default, to suffer rigorous imprisonment for two months.

— for the offence punishable under section 177 of the Indian Penal Code, to suffer rigorous imprisonment for three months and to pay fine of Rs. 500/-, in default, to suffer rigorous imprisonment for one month.

All the said sentences were directed to run concurrently.

The applicant was however, acquitted of the offence punishable under section 498-A of the Indian Penal Code.

4. Perused the papers. The prosecution case rests entirely on circumstantial evidence. It is the case of the prosecution that the incident took place on 18th June 2013. It is alleged that the applicant assaulted his wife (deceased) with a sickle, as a result of which she succumbed to the injuries.

5. Admittedly, the sickle which was found in the house, no blood stains were found, and as such finding of the sickle cannot be said to be incriminating. As far as the recovery of the clothes are concerned, the same were recovered under section 27 of the Indian Evidence Act, at the applicant's instance, from the house itself, where the dead body of the applicant's wife was found. This is the only circumstance as against the applicant.

6. Learned counsel for the applicant submits that the said circumstance, i.e. finding of blood-stained clothes of the applicant, is doubtful, in as much as, the same was allegedly recovered after three days of the incident, more particularly, when the police had come to the spot, and searched the house.

7. Learned APP is unable to point out any other evidence, apart from the aforesaid circumstance relied upon by the learned Judge to convict the applicant in the alleged crime. It is the applicant's case that his wife was murdered by unknown persons, when he left his house at about 8.00 a.m. to invite his relatives. According to the applicant, when he returned at about 11.00 a.m., he found that his wife was dead. The applicant is in custody since 2013, i.e. almost 10 years. The appeal is of the year 2019 and is not likely to come up for hearing, in the immediate near future.

8. Considering the aforesaid, 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.

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.