

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

***CRIMINAL INTERIM APPLICATION NO.1274 OF 2023
IN
CRIMINAL APPEAL NO.900 OF 2019***

Sameer Dattatrya Vyavahare Applicant

In the matter between:

Sameer Dattatrya VyavahareAppellant
Vs.
State of Maharashtra and Ors. Respondents

Mr. Akshay Bankapur for the Applicant.
Mr. V. B. Konde Deshmukh, A. P. P. for Respondent-State

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 24 APRIL 2023.

P. C. (Per Sharmila U. Deshmukh, J.)

1. By this application filed under section 389 of the Criminal Procedure Code, the applicant seeks suspension of his sentence and enlargement on bail pending the hearing and final disposal of the appeal. Vide judgment and order dated 8/5/2019, the applicant was convicted for the offences punishable under section 148, section 302 and section 307 read with section 149 of

the IPC and sentenced for the offence under section 148 to suffer RI for 3 years and fine of Rs.3,000/-, for offence under section 302 to suffer life imprisonment and fine of Rs.25,000/- and for offence under section 307 to suffer RI for 7 years and fine of Rs.25,000/-.

2. Heard learned counsel appearing for the applicant and learned APP for Respondent-State.

3. Learned counsel appearing for the applicant submits that the applicant is entitled to suspension of his sentence and enlargement on bail on merits as well as on the ground of parity. He seeks parity with accused No.6-Amit Dattatraya Vyawahare whose sentence has been suspended and he is enlarged on bail by order of this Court dated 18/4/2023. He would submit that the role alleged to the applicant is similar to that of Amit Dattatraya Vyawahare. He would further submit that the sentences of co-accused No.4 Sunil Hansraj Senbhakta, co-accused No.6-Amit Dattatraya Vyawahare, co-accused No. 7-Andy @ Dipak Manikrao Waghmare, co-accused No.9-Venkatesh Nanasaheb More and co-accused No. 10-Sushil Manohar Gaikwad have been suspended

and they have been enlarged on bail.

4. Learned APP does not dispute the position that the role of the present applicant is similar to that of co-accused Amit Dattatraya Vyawahare, who has been granted bail.

5. Perused the evidence on record with the assistance of learned counsel appearing for the parties. The incident in question has taken place in the intervening night of 15/9/2015 and 16/9/2015 in which one Rahul @ Gunaji Jadhav was murdered and Kishore Nagare was seriously injured. FIR has been registered by one Hiralal Krishna Thombare.

6. Perusal of the evidence of PW-1-Hiralal Thombare reveals that he has deposed that the present applicant had attacked the deceased. He has further deposed that Amit Vyawahare was armed with beer bottle and Nikhile More was armed with a countrymade revolver. He has further deposed that rest of the accused were armed with weapons. Two eye witnesses viz. PW-3-Sagar Prakash Pardeshi and PW-4-Sachin Sukhlal Kumavat have

deposed that the applicant was armed with wooden log. PW-2-Kiran Kulkarni has deposed that the applicant had assaulted the deceased with a chopper. As such, as per PW-1-Hiralal Thombare, applicant was not armed, as per PW-3-Sagar Pardeshi and PW-4-Sachin Kumavat- eye witnesses, the applicant was armed with wooden log and as per PW-2-Kiran Kulkarni, applicant was armed with chopper. Perusal of the injury certificate which is at page 164 of the petition and in particular column 17 of the injury certificate reveals that none of the injuries sustained by the deceased would be as a result of assault by a wooden log.

7. The role attributed to co-accused-Amit Vyawahare is assault with chopper. As per the evidence of PW-3-Sagar Prakash Pardeshi and PW-4-Sachin Sukhlal Kumavat, the role attributed to the present applicant in the evidence is identical to the role attributed as against co-accused Amit Vyawahare, except as regards the weapon.

8. Learned APP does not dispute that the applicant does not have any criminal antecedents and it is also not disputed that he

has not misused the liberty and has not breached the terms and conditions on grant of bail. Present appeal being of the year 2019 there is no possibility of appeal being taken up for final hearing immediately.

9. Having heard the learned counsel for the applicant and after considering the evidence which has come on record, we are inclined to suspend the sentence and enlarge the applicant on bail pending the final hearing of the appeal on the following terms and conditions:

i) The sentence imposed on the Applicant in Sessions Case No.266 of 2017 by the learned Additional Sessions Judge-3 Nashik is hereby suspended, pending the hearing and final disposal of the appeal.

ii) The applicant be enlarged on bail on furnishing P. R. Bond in the sum of **Rs.25,000/- (Rupees Twenty five thousand)** with **one** or **two** sureties in the like amount;

iii) The applicant shall report to the trial Court, once in

three months on the day/date specified by the trial Court, till the appeal is finally disposed of;

iv) 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;

v) 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.

vi) The application is accordingly disposed of.

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

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.