

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

***CRIMINAL INTERIM APPLICATION NO.1529 OF 2023
IN
CRIMINAL APPEAL NO.297 OF 2023***

Sanjay Sukat Chouhan

..... Applicant/
Accused No.1

Vs.

The State of Maharashtra

..... Respondent

Mr. Aniket Vagal a/w. Mr. Kunal Pednekar and Mr. Divesh Mehani for the Applicant.

Mr. S. S. Pednekar, APP for Respondent-State.

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

DATE : 27 APRIL 2023.

ORDER (Per Sharmila U. Deshmukh,J.)

1. By this application, preferred under section 389 of Criminal Procedure Code, the applicant seeks suspension of his sentence and enlargement on bail pending hearing and final disposal of the aforesaid appeal.

2. The applicant alongwith other two co-accused have

been convicted and sentenced *vide* judgment and order dated 14th February, 2023, passed by learned Additional Session Judge, Nashik in Sessions Case No.65 of 2021, 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.2,000/- each, in default, to suffer rigorous imprisonment for 3 years.

3. Heard Mr. Vagal, learned counsel for the applicant and Mr. S. S. Pednekar, APP for the Respondent-State.

4. The incident in question has taken place on 14th November, 2020. It is the case of the prosecution that the applicant alongwith the other two co-accused assaulted the deceased with a wooden bat. As a result, the deceased suffered head injury and was shifted to Sukhakarta Hospital where after a period of 4 days he succumbed to the injuries.

5. Learned counsel appearing for the applicant submits

that the role which is attributed to the applicant is that the applicant alongwith accused No.3 assaulting the deceased on his head with wooden bat. He would further submit that taking the case as it stands, the applicant cannot be convicted for the offence under section 302 of IPC. He would further submit that accused No.1 who is alleged to have held the deceased has been granted bail by this Court *vide* order dated 31st March, 2023. He would further submit that the applicant was on bail pending trial and has not misused or abused the liberty granted to him.

6. Learned APP opposed the application.

7. Perused the papers. There are four eye witnesses including the wife of the deceased, to the alleged incident of assault. The role attributed to the applicant is that the applicant alongwith Accused No 3 assaulted the deceased with a wooden bat. PW-1- Sangita- wife of the deceased has deposed that the Applicant and Accused No 3 had assaulted the deceased on his head with a wooden bat. PW-2 Amardeep has deposed that Accused No 3 had assaulted the deceased on the head with a wooden bat and

Applicant had assaulted the deceased on his back and eyes with the bat. PW-4- Vishal has deposed that Applicant had assaulted the deceased below his eyes with the bat. PW-6 Ramakant Yadav has deposed that Applicant assaulted the deceased on his eyes with the bat.

8. The incident had taken place on 14th November, 2020 and the deceased is stated to have expired on 18th November, 2020 i.e. four days after the alleged assault. The post mortem report indicates the cause of death as cranio-cerebral damage due to blunt trauma to head. It is not disputed that the applicant was on bail pending trial and he has not misused or abused the liberty granted to him. The Appeal has been admitted by this Court vide order dated 27th March, 2023 and the same is not likely to come up in the immediate near future.

9. Having regard to the submissions of the learned counsel for Appellant and in view of the discussion above, we are of the opinion that the application deserves to be allowed.

10. Hence, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the 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.15,000/- 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 the 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.

v) 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.

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