

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1393 OF 2022
IN
CRIMINAL APPEAL NO. 928 OF 2015

Nitin Aganda Lade ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. M. K. Kocharekar i/b. Mr. Vinayak Patil for the Applicant.

Ms. S. S. Kaushik, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 24th 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 23rd August 2013 passed by the learned Additional Sessions Judge, Karad, has been convicted for the offence punishable under section 302 of the Indian Penal Code and is sentenced to suffer rigorous

Digitally signed
by RAJESHWARI
RAMESH PILLAI
Date:
2023.07.25
15:07:22 +0530

RAJESHWARI
RAMESH
PILLAI

imprisonment for life and to pay a fine of Rs. 5000/- in default, to suffer simple imprisonment for six months.

4. Perused the papers. The deceased-Prajwal is the nephew of the applicant. According to the prosecution, Prajwal (deceased) aged 2½ years, was playing in the courtyard on 27th October 2011 between 11.00 am to 11.30 am. As Prajwal did not return, his mother (PW-6) started searching for him and even went to Karad to find out whether Prajwal was alongwith her maternal aunt.

5. It appears that Prajwal was found in the well of Shankar Pandurang Kadam and as such, had died due to drowning. The prosecution case rests entirely on circumstantial evidence. As far as motive is concerned, it appears that Prajwal's parents were examined to prove motive, however, they turned hostile and as such, did not support the prosecution case.

6. The only evidence against the applicant was that of he being last seen with Prajwal on the day of incident. The witness examined by the prosecution in support of the same, was PW-8

Suraj Nikam. During the hearing of the aforesaid appeal, whilst perusing the evidence of PW-8 Suraj Nikam, it was noted by this court that Suraj Nikam was not cross examined by the Applicants Advocate and hence, this Court vide order dated 1st October 2022 directed the recording of the cross examination of PW-8-Suraj Nikam for reasons mentioned in the said order. Accordingly, an Advocate was appointed on behalf of the applicant for the purpose of cross examination of the said witness.

7. Learned counsel for the applicant has tendered the cross examination of the said witness i.e. PW-8-Suraj Nikam conducted by the trial court, as directed by this Court. The said cross examination of PW-8-Suraj Nikam is taken on record. A perusal of the cross examination of the said witness shows, that the said witness has admitted that on the date of the incident he had not seen the child along with applicant-Nitin Aganda Lade nor had he any occasion to visit the well, where the dead body of Prajwal (deceased) was found. He has further stated, that at the time of recording of the evidence, the police had tutored him, pursuant to which he gave the said evidence. He has further stated that he

has no personal knowledge in respect of how the child had fallen in the well and drowned thereafter. As noted earlier, this is only the evidence i.e. of last seen, as against the applicant.

8. Now, having noted what is stated by the said witness PW-8-Suraj Nikam in his cross examination, the said evidence also does not support the prosecution. There is no other evidence apart from the aforesaid, atleast, the same has not been pointed out by the learned APP. The applicant is in custody since 2011 for almost 12 years with no prospect of his appeal being heard in the immediate future.

9. Considering what is stated aforesaid, the application is allowed and the applicant's sentence is suspended and is enlarged on bail pending the hearing and final disposal of the 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 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.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.