



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1594 OF 2023
IN
CRIMINAL APPEAL NO. 1339 OF 2019

Vishal Hiranman Atkale	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. M.D.Pareek, for the Applicant.

Mr. K.V.Saste, A.P.P for the Respondent-State.

*CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.*
DATE : 25th AUGUST, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By the aforesaid 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 alongwith other co-accused, vide Judgment and Order dated 11th September, 2019, passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No. 527 of 2015, has been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer simple imprisonment for six months; in addition, the applicant alongwith other co-accused has also been convicted for the offence punishable under Section 341 r/w 34 of the Indian Penal Code, and is sentenced to suffer simple imprisonment for one month and to pay fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for one week. Both the aforesaid sentences were directed to run concurrently.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused Avinash Rajan Ambekar and Amol Suesh Ghuge have been enlarged on bail, pending

the hearing and final disposal of their appeal.

5. Learned APP does not dispute the fact, that role of the applicant is similar to that of co-accused Avinash Ambekar and Amol Ghuge.

6. Perused the papers. The prosecution case rests on direct evidence. There are four eye-witnesses to the incident in question, which took place on 16th February, 2015. From a perusal of the evidence of the said witnesses, it appears that all the eye-witnesses have alleged that the accused Nos.1 to 5 and 8 assaulted the deceased with fist and kick blows and with paver blocks.

7. No specific role has been attributed to any of the accused. As far as the applicant (original accused No.5) is concerned, it appears that he was not identified in the Test Identification Parade which was conducted by the prosecution. It is pertinent to note that the accused No.2 i.e. Amol Ghuge was identified in the Test Identification Parade,

however, taking the prosecution evidence as on record, this Court vide order dated 1st August, 2022, suspended the sentence of Avinash Ambekar (Original Accused No.8) and Amol Ghuge (Original Accused No.2) and enlarged them on bail, pending the hearing and final disposal of their appeal.

8. This Court, whilst granting bail to the said accused has observed in para 4 as under;

“4. Perusal of evidence of the said witness, prima facie creates doubt in the mind of Court about his conduct and behaviour about not reporting the said fact to the Police immediately after the said assault on the deceased in the wee hours of 16.02.2015. It is to be noted here that, prima facie it appears that there is no evidence as to who has actually assaulted deceased Afzal with stone on the day and time of the incident.”

9. Considering the evidence as stated aforesaid and having regard to the fact, that the role of the applicant is similar to that of co-accused - Avinash Ambekar and Amol Ghuge, the application is allowed. Accordingly, 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 released 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 accordingly disposed of on the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.