

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

***INTERIM APPLICATION NO. 1664 OF 2023
IN
CRIMINAL APPEAL NO. 508 OF 2023***

Narayan Nago Pardhi ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Rajendra Tajane i/b Mr. Mangesh Deshmukh for the Applicant

Mr. S. V. Gavand, Addl.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 20th DECEMBER 2023**

ORAL ORDER (Per Revati Mohite Dere, J.) :

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 the aforesaid appeal.

3 The applicant vide judgment and order dated 14th February 2023, passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No. 408/2019, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer further rigorous imprisonment for one month. Another co-accused i.e. brother of the applicant was acquitted of the offence punishable under Section 302, for the reasons set-out in the same judgment and order.

4 Perused the papers. According to the prosecution, the incident took place on 20th June 2019 at about 8:45 p.m. when the deceased-Bhaskar had come to the house of the applicant and his brother i.e. co-accused No.2. It is alleged by the prosecution that there was an altercation between the deceased and the applicant and that in that quarrel, the applicant assaulted the deceased with an axe, which was lying in the courtyard. The

applicant is alleged to have assaulted the deceased with an axe on his thigh. The evidence of PW5- Dr. Shankar Sutar shows that the femoral artery and vein of the deceased was cut. The cause of death is stated to be cardio-respiratory arrest due to haemorrhagic shock with cutting of large vessels of right lower limb due to hard and sharp object.

5 Learned counsel for the applicant submits that the prosecution case rests on circumstantial evidence and the prosecution has not proved the circumstances on record, beyond reasonable doubt. Not a single eye-witness was examined in the said case, though available and though statements of eye-witnesses were recorded. He submits that even otherwise, taking the prosecution case as it stands, no offence under Section 302 of the Indian Penal Code is disclosed *qua* the applicant and at the highest, the offence would be a lesser offence. He submits that the applicant is in custody for the last 4 years and 6 months i.e. from 20th June 2019.

6 Learned Addl. P.P. does not dispute the fact that eye-witnesses' statements were recorded, however, they were not examined.

7 Having regard to what is stated aforesaid and the fact that the applicant is in custody for the last 4½ years and the appeal is of the year 2023 and the same is not likely to reach in the immediate near future, 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 four 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.

8 The Application is disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.