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

**INTERIM APPLICATION NO. 1652 OF 2023
IN**

CRIMINAL APPEAL NO. 434 OF 2023

Nitin Uttam Pandit

... Applicant

vs.

The State of Maharashtra

... Respondent

Mr. Sudarshan Salunkhe a/w Mr. P.B. Gujar, for the Applicant

Mrs P.P. Shinde, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 28th JUNE, 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 14th February 2023 passed by the learned Session Judge, Nashik in Session

Case No. 198 of 2018 alongwith other co-accused has been convicted and sentenced as under:

- for the offence punishable under section 302 r/w 149 of IPC to suffer imprisonment of life and to pay fine of Rs. 5000/- in default, to suffer simple imprisonment for six months.

and;

- for the offences punishable under Sections 143 and 148 of IPC to suffer simple imprisonment, as well as to pay fine.

All the sentences have been directed to run concurrently.

4. Perused the papers, and, in particular the evidence of the eye-witnesses i.e. PW 1-Ramesh, PW 8-Dagu, PW 9- Santosh and PW 10-Chetan Bagule.

5. It is the prosecution case, that the incident took place on 27th December 2017 at about 10:30 pm-11:00 pm. According to PW 1– Ramesh, an eye witness and first informant, he was out with Devidas(deceased) on the said day. He has stated that at

about 10:30 pm they had pavbhaji; that after having pavbhaji he, Dinesh and Devidas(deceased) went on Pulsar motorcycle to drop Devidas at Rajivnagar Zopadpatti; that at about 11:00 p.m, when they reached the tar road outside the house of Devidas, they got down from the motorcycle; that one rickshaw was in front of them; that from the said rickshaw, Ravi Nikalje, Sachin Nikalje, Krushna Shinde, Nitin Pandit(Applicant), Deepak Vavar, Balu Dambale who were sitting in the rickshaw stepped out; that the said persons came near Devidas and that because of some old dispute, there was quarrel between these persons and Devidas. PW-1-Ramesh has further stated that Sachin Nikalje and Krushna Shinde ran towards the zopadpatti; and after going inside the zopadpatti, Sachin Nikalje returned with a sword like weapon in his hand and Krushna with a sickle(Koyta); that Sachin Nikalje assaulted Devidas with the sword like weapon on his neck, pursuant to which Devidas fell down on the ground; that he (PW-1) and Dinesh tried to lift him, however, at that time, Ravi Nikalje pulled the sword like weapon from Sachin's hand and stabbed Dinesh (deceased); and that Dinesh also fell on the ground. According to PW 1-Ramesh, after witnessing the assault,

he started running towards the old Indira Nagar police station; that Ravi Nikalje having sword like weapon and others having stones in their hand started chasing him (PW-1); that whilst running he fell on the ground, resulting in an injury on his left leg and palm; that he again got up and went to the spot, where Dinesh and Devidas were being assaulted; that pursuant to the said incident Dinesh and Devidas succumbed to their injuries. A perusal of the evidence of PW 1-Ramesh, shows that the said witness has not attributed any over act to the applicant except for stating that applicant was alongwith the other co-accused and that he too got down with the other accused from the rickshaw.

6. As far as PW-8-Dagu is concerned, he has stated that the incident took place on 27th December 2017; that on hearing noise on the road, he saw 5-6 people assaulting his nephew Dinesh; that Ravi Nikalje had held his nephew by his hair and was assaulting his nephew with a chopper on his neck; and that his brother Devidas was lying in blood pool, at a distance of 50-60 feet. PW 8- Daggu has also not attributed any over act to the applicant. Police recorded his statement after four days of the

incident.

7. PW 9- Santosh in his evidence has stated that on the day and time of the incident, he was at a distance of 100-125 feet; that there was some quarrel going on; that he saw 5-6 persons assaulting his cousin Dinesh and Devidas with a knife. He has stated that Sachin Nikalje assaulted Devidas in his abdomen with a knife and that Deepak and Bablu had held Devidas; that when Devidas came ahead to save Dinesh, Ravi Nikalje pull out the knife from Sachin's hand and assaulted Dinesh on his back and neck; that Dinesh tried to run, however, he too fell down; that Krushna Shinde and Nitin Pandit had held him; and that Ravi Nikalje came and assaulted Dinesh with a knife on his throat. P.W.-10's- Chetan evidence is similar to that of P.W-9- Santosh. No specific over act has been attributed to the applicant even by the said witnesses i.e. PW-9 and PW-10.

8. Be that as it may be, it is not in dispute that the applicant was on bail pending trial and that post his conviction, he was taken into custody. It is also not in dispute that whilst on bail, the applicant has not abused or misused his liberty or misused the

conditions of bail. Admittedly, there is no other circumstantial evidence on record as against the applicant.

9. Considering the nature of evidence against the applicant, his role in the incident and the fact, that the applicant was on bail pending trial, the application is allowed and 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.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 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.

10. 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.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)