

Iresh

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

**INTERIM APPLICATION NO. 2123 OF 2023
IN
CRIMINAL APPEAL NO. 661 OF 2023**

Vikas Baban Khedkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Deepak Girme advocate for the applicant

Ms. S. S. Kaushik APP for the State

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

DATE : 28th 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 3rd April 2023

passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 261 of 2018 has been convicted 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. 25,000/-, in default to suffer simple imprisonment for three months.

4. Perused the papers, in particular the evidence adduced in the said case. According to the prosecution, the incident took place on 22nd December 2017 at about 10.15 p.m. in front of the applicant's house. It is prosecution case, that there was a dispute between the parties i.e. between Prakash (deceased) and the applicant, who were cousins. It is alleged that the applicant threw chilly powder on Prakash and thereafter, assaulted him with an iron rod and stone, pursuant to which, Prakash succumbed to his injuries. Admittedly, the prosecution case rests entirely on circumstantial evidence, in particular, the evidence of extra judicial confession allegedly made by the applicant to P.W. 1-Machhindranath Khedkar and P.W. 3-Ajay Khedkar. P.W. 1-

Machhindranath has in his evidence stated that on 21st December 2017, he was not present when the alleged incident took place and that when he returned, he saw dead body of Prakash lying near the door of the applicant's house. According to P.W. 1, the applicant disclosed to him, that he had assaulted Prakash, as he was harassing him, pursuant to which, he informed the police of the said incident.

5. As far as P.W. 3 Ajay Khedkar is concerned, according to the said witness, the applicant had gone to his residence soon after the incident and informed him that there was a quarrel between the applicant and deceased Prakash, pursuant to which, he assaulted Prakash. P.W. 3-Ajay Khedkar has further stated, that when the same was disclosed, he went to the spot where Prakash was lying; that on seeing Prakash, he called P.W. 1 Macchindranath and informed him of the said incident; that P.W. 1-Macchindranath informed him, that he was returning home; and, that after some time, P.W. 1-Macchindranath reached home and informed the police.

6. Learned counsel for the applicant submits that that P.W. 1 -

Macchindranath has not disclosed about the disclosure made to him by P.W. 3- Ajay Khedkar nor has he mentioned that P.W. 3-Ajay Khedkar was present on the spot, when he reached.

7. We have perused the evidence. Prima facie, there appears to be substance in the submissions advanced by the learned counsel for the applicant. We are informed that the applicant was on bail pending trial. The appeal was been admitted on 22nd June 2023 and the same is not likely to be heard in the immediate near future.

8. Considering the evidence as stated aforesaid, 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 six 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 allowed in the aforesaid terms and is
accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.