

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

**INTERIM APPLICATION NO. 2018 OF 2023
IN
CRIMINAL APPEAL NO. 757 OF 2023**

Tambi@Dinesh@ Jesudas Paulraj Pille ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Dilip Bagwe a/w Ms. Jaymala Ostwal i/b J.J. Associates, for
the Applicants/Appellants.

Ms. S.S. Kaushik, A.P.P for the State.

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

DATED : 10th JULY, 2023

P.C. :-

1. By this application, the Applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

2. The Applicant, vide judgment and order dated 22nd February, 2023, passed by the learned Additional Sessions Judge, Dindoshi, Mumbai in Sessions Case No.101 of 2011, has been convicted alongwith the other co-accused, for the offence

punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 and is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for 10 days.

3. The incident is alleged to have taken place on 16th March, 2021. According to the prosecution, in the said quarrel the Applicant alongwith other two co-accused assaulted the deceased – Asif with iron rod and wooden stick. In the said incident, the deceased – Asif succumbed to the injuries sustained by him.

4. The prosecution in support of its case, examined six witnesses. Out of the said six witnesses, five witnesses were eye-witnesses i.e. PW1 to PW5. As far as PW1, PW2 and PW5 are concerned, the said witnesses have turned hostile, and as such, do not further the prosecution case. As far as PW3 is concerned, the evidence of the said witness – Sarvari Begam, shows that when she went to the spot where the deceased was lying, the deceased–Asif named all three accused. The said witness has not disclosed what were the names disclosed by Asif (deceased), and

as such, the evidence does not *prima facie*, reveal the Applicants' complicity. As far as PW4 is concerned, the said witness has disclosed that there was a quarrel which took place between the accused and the deceased, and that the accused No.2– Tambi(applicant) assaulted Asif (deceased) with a rod, behind his head, pursuant to which Asif fell down; that thereafter, accused No.1– Satish assaulted Asif with a rod on his face and hand and co-accused – Akhil assaulted Asif with a wooden stick.

5. Perusal of the cross-examination of the said witness in paragraph no. 5 shows that in the Section 161 statement the said witness had stated i.e. Asif was holding knife at the relevant time; that he had threatened the accused; that Asif was telling that the Applicant was informer of the police and he would kill him.

6. Admittedly, there is no recovery of any rod or blood stains clothes at the instance of the Applicant. The Applicant was on bail pending the trial and there is nothing to indicate that he has abused the conditions of bail. Vide order dated 24th April 2023, suspended the sentence of co-accused Satish is suspended and he

is enlarged on bail on certain terms and conditions. Overall considering the nature of allegations, the evidence *qua* the Applicant and the fact, that the Applicant was on bail during the trial, the application is allowed and the Applicant's sentence is suspended and he is enlarged on bail 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/- (Rupees-Twenty Five Thousand)** with **one** or **two** sureties in the like amount;
- (ii) The applicant shall report to the trial Court, once in three months i.e. on the day and 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.

7. The Interim Application is allowed in the aforesaid terms.
8. All concerned to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)