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

CRIMINAL APPLICATION NO. 801 OF 2019

IN

CRIMINAL APPEAL NO. 742 OF 2019

Divyesh Prakash Aware ... Applicant

vs.

The State of Maharashtra ... Respondents

WITH

CRIMINAL APPEAL NO. 758 OF 2019

Nana Tukaram Borse Natural Guardian of ... Appellant
Ravindra Nana Borse(Since deceased)

vs.

The State of Maharashtra and Ors ... Respondents

Mr Sanghraj Rupawate, i/b Ms Pooja Thakur, for the Applicant.

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

Mr Sarfaroj Shaikh i/b Mr Sachin Gite, for the Respondent No. 4
in Appeal/758/19.

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

DATED : 1st AUGUST, 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 28th March 2019, passed by the learned District Judge-9 and Additional Sessions Judge, Nashik in Sessions Case No. 184 of 2015, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs. 25,000/- in default, to suffer simple imprisonment for one month;

4. Perused the papers. According to the prosecution, the incident took place on 16th February 2015 in the College Campus during the Shiv Jayanti festival. It is the prosecution case, that the applicant alongwith three others assaulted deceased-Ravindra, resulting in his death. After a full fledged trial, the Applicant was convicted as stated aforesaid. The prosecution in support of its case, relies on the evidence of PW-3- Sanket Bagul, a friend of deceased-Ravindra. According to PW-3-Sanket, there were three

processions of Shiv Jayanti being celebrated in the college campus. He has stated that there was dancing going on when, in one of the procession, quarrel took place and the boys started running helter skelter. He has further stated that Ravindra(deceased) alongwith his friend started running towards the college building; that he saw the applicant running behind Ravindra with a knife; that the applicant held Ravindra and assaulted him with a knife, and inflicted two blows, one on the the chest and the second, on the stomach. He has further stated that soon after the incident, he and his friend put Ravindra in a vehicle and took him to a Hospital, at Satpur; that since Ravindra's condition was serious, the doctor asked them to take Ravindra to the Civil Hospital, at Nashik; and that on reaching the Civil Hospital, the doctor declared Ravindra dead. It appears from the evidence of PW-3-Sanket, that the said witness have not identified the knife with which Ravindra was assaulted. On a perusal of the cross-examination of PW-3, it further appears that his statement was recorded by the police, after almost three weeks of the incident. PW-3-Sanket, has in cross-examination in para 10 stated as under:

“10. It is true to say that the police in between the period of 16/02/2015 to 11/03/2015 had not given me any written notice calling upon me to give any statement as regards to the alleged incident. I have not made any contact with the police by use of my mobile phone in between the said period vice versa. It is true to say that I have not felt proper that in between the said period to go to the police and inform them about the alleged incident. I have seen the police in between 16/02/2015 to 11/03/2015. It did not happen that in between that period I have given information to the police and they have written down it on the paper.”

4. PW-3-Sanket, has further in his cross-examination stated that when he reached the Civil hospital, the police were present at the Civil hospital, however, he did not disclose anything to the Medical Officer, present at the Civil Hospital, as to how the incident took place nor did he reveal the names of the person involved. The applicant is in custody since 2018. The appeal is of 2019 and the same is not likely to be taken up for final hearing, in the immediate near future.

5. Considering the evidence on record and the fact, that the

applicant is in custody since 2018, 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 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.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)