



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

**INTERIM APPLICATION NO. 2043 OF 2023
IN
CRIMINAL APPEAL NO. 725 OF 2023**

Amit Indradev Gupta
Age: 35 years, Indian inhabitant
R/o: Samadhan Apartment,
Room No. 202, Anand Koliwada
Mumbra Dist. Thane.

...Applicant

Versus

The State of Maharashtra
(At the instance of Kapurbawadi
Police Station vide C.R. No. I-1/2017)

...Respondent

Mr. Arun Rajput a/w Mr. Viral Mukta for the applicant
Mrs. P. P. Shinde, APP for the State

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

DATE : 14th 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 his aforesaid appeal.

3. The applicant by Judgment and Order dated 2nd March 2023 passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 208 of 2017 has been convicted and sentenced alongwith another co-accused as under:

— For the offence punishable under Section 302 read with 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 1000/-, in default to suffer further rigorous imprisonment for one month.

4. Perused the papers. The prosecution case rests essentially on the evidence of two alleged eye witnesses i.e. P.W. 1-Sachin More and P.W. 4-Sunil Singh. According to both the aforesaid witnesses, they were working alongwith deceased Vikas at Vijay Sales at the relevant time; that after work, they went to a restaurant at Kapurbavdi Naka for dinner; that post dinner at around 1.00 a.m., they were walking towards Majiwada Naka to catch auto-rickshaw; that Sachin More was looking for an auto-rickshaw for Vikas(deceased) to go to Kalyan and

rickshaw for him to go to Wagle Estate. According to these witnesses, since no rickshaw was available, Vikas (deceased) was inquiring with tourist cars whether they would go to Kalyan; that he stopped one such car; that one person got down from the said car and started quarreling and that in that quarrel, one person inflicted a blow with a knife/a sharp weapon on the left cheek and left abdomen of Vikas and other two persons had alleged to have attempted to strangulate Vikas and assaulted Vikas with fist and kick blows; that when they rushed to protect Vikas, said persons fled in an auto-rickshaw; that Vikas succumbed to the injuries sustained by him. P.W.1-Sachin More lodged F.I.R. as against three persons.

5. We have perused the evidence of eye witnesses. Neither of these eye witnesses have identified the applicant in Court as the person who assaulted the deceased with the knife. The applicant is in custody for more than 7 years. The appeal is of the year 2023 and is not likely to come up for the hearing in the immediate near future.

6. Considering the evidence as stated aforesaid and the fact that the

applicant is incarcerated for about 7 years, 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 4 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/contact 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 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.