

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

***CRIMINAL INTERIM APPLICATION NO.2042 OF 2023
(FOR BAIL AND SUSPENSION OF SENTENCE)
IN
CRIMINAL APPEAL NO.689 OF 2023***

Chandrakant Dattu Gholap	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms. Nazia S. A. Sheikh, Appointed Advocate for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

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

DATE : 2nd NOVEMBER 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 the aforesaid appeal.

3. The applicant vide Judgment and Order dated 10th May 2022, passed by learned Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay, in Sessions Case No. 684 of 2018, has been convicted and sentenced as under:-

- for the offence punishable under Section 307 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for 10 days.
- As far as offences punishable under Sections 4, 27 of the Arms Act and Section 37(1) r/w 135 of the Maharashtra Police Act, are concerned, the applicant was acquitted of the said offences.

4. Learned counsel for the applicant submits that the applicant is suffering from Schizophrenia, for last several years. Learned counsel relied on the medical certificate dated 18th September 2018 issued by Dr. Nilesh Shah, Professor & Head, Department of Psychiatry, Sion Hospital, Mumbai.

5. Learned APP also opposes the application.

6. Perused the papers. It appears that the applicant assaulted his wife with a knife, pursuant to which an offence came to be registered with the Deonar Police Station, Mumbai, for the alleged offences punishable under Section 307 of the Indian Penal Code (IPC), Sections 4, 27 of the Arms Act and Section 37(1)(a) r/w 135 of the Maharashtra Police Act. After evidence was led, the applicant was convicted as stated aforesaid to suffer rigorous imprisonment for life for the offence punishable under Section 307 of the IPC.

7. Learned counsel for the applicant submits that the sentence is harsh for the offence punishable under Section 307 of the IPC. She submits that the applicant is suffering from Schizophrenia, as is evident from the certificate relied upon by her, dated 18th September 2018.

8. We have perused the said certificate dated 18th September 2018. In the said certificate, it is stated that the applicant was admitted to the Sion Hospital first in the Medical Ward on 4th

September 2018, for consumption of phenyl and rat poison bar. It is also stated that the applicant attempted to take his life and tried to harm himself while he was admitted in Medical Ward and hence he was transferred to psychiatry ward on 15th September 2018. It is further stated that the applicant was in psychiatry ward for treatment for his psychiatric disorder, Schizophrenia. Although, learned APP states that the applicant was not suffering from Schizophrenia, at the relevant time i.e. at the time of the alleged assault by the applicant on his wife, it appears that the applicant in support of his defence has examined DW1 – Dr. Nilesh Shah. In his evidence, the doctor has clearly stated that he examined the applicant and after examination, he found that he was suffering from Schizophrenia. The certificate issued by the doctor has been duly exhibited in his evidence as Exhibit – 46. A perusal of the cross-examination reveals that there is no cross-examination that the applicant was not suffering from Schizophrenia. To the contrary, in the cross, it is being brought on record that the accused-Chandrakant Dattu Gholap was suffering from schizophrenia paranoids. No other suggestion has been brought

on record by the State.

9. Learned counsel for the applicant has tendered an affidavit of the applicant's brother-Ravinder Dattu Gholap. In the said affidavit, the applicant's brother-Ravinder, has undertaken to look after him and has also expressed his readiness and willingness to take his full responsibility. He has also undertaken to take the applicant's responsibility and to ensure that treatment is provided to the applicant and that the applicant will not harm anybody, if released. The said affidavit dated 27th October 2023 of the applicant's brother-Ravinder, is taken on record. The applicant is in custody since October 2018. The appeal is of the year 2023 and the same is not likely to come up for the hearing in the immediate near future.

10. Considering what is stated aforesaid and in particular the medical condition of the applicant, 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.10,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in four 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.

11. 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.