



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

**CRIMINAL INTERIM APPLICATION NO. 2078 OF 2023
IN
CRIMINAL APPEAL NO. 134 OF 2017**

Rakesh Dattaram Mane ... Applicant

vs.

The State of Maharashtra ... Respondents

Ms. Payoshi Roy i/b. Dr. Yug Mohit Chaudhry, for the Applicant.
Mr. K.V. Saste, A.P.P for the State.

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

DATED : 20th SEPTEMBER, 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 24th and 29th November 2016, passed by learned Additional Sessions Judge, Bombay in Sessions Case No. 467 of 2014, has been

convicted 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. 5,000/- in default, to suffer rigorous imprisonment for six months;

4. Perused the papers. It appears that there are three witnesses to the incident, which took place on 17th March 2014 i.e. PW-1- Rajendra, PW-2- Moreshwar and PW-4-Ravindra. A perusal of the evidence of the said three witnesses would reveal that the incident took place on 17th March 2014 at about 2.00 p.m in front of Ravindra Natya Mandir, Dadar. The said witnesses have stated that two persons i.e. the applicant and the deceased were quarreling near Gate No.2; and that in the quarrel one person(applicant) attacked the deceased by throwing a stone on his head. Pursuant thereto, the applicant was apprehend at the spot. The learned counsel for the applicant submits that taking the prosecution case as it stands, the offence would not be one under section 302 of the IPC, but would be a lesser offence, including an offence under section 326 of the IPC. She submits

that although the alleged incident had taken place on 17th March 2014, the deceased expired on 2nd April 2014. The perusal of the evidence of PW-8-Dr Yogesh Jaiswal reveals that he was in the emergency ward on 17th March 2014; that on the said date, at about 3.52 p.m, Subhash(deceased) was brought to the hospital by Police Constable attached to the Dadar Police Station. He has stated that the patient had history of head injury and of loss of consciousness till admission. He has further stated that the patient had friction abrasion 0.5 x 0.5 cm right eyebrow and there was nasal bleeding. He has further stated that on receiving C.T scan report, it was noticed that the patient had right frontotemporoparietal extra axial haemorrhage causing effacement of right adjacent sulci. It is further stated that he had right sided cerebral edema and from the X-ray report it was noticed that he had sustained fracture of left nasal bone. PW-8 – Dr. Yogesh Jaiswal has further stated that the patient was discharged against the medical advice on 1st April 2014. The evidence of PW-7-Dr. Satish Prasanna reveals that on 2nd April 2014, Subhash(deceased) was brought in an ambulance and on examination, he was found dead. It thus, appears that the

deceased expired after 16 days of the alleged incident. Perusal of the cross-examination of PW-7-Dr. Satish Prasanna shows that he has stated that due to head injury, pumping of heart stopped and patient suffered heart attack. It is further stated that no injuries were found except on his head. Admittedly, the post mortem report of the deceased has not been produced by the prosecution so as to know the exact cause of death.

5. The applicant is in custody for the last 9 and 1/2 years i.e. from March 2014. Appeal is of the year 2017. Considering the 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. 20,000/- 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.

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

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)