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

**INTERIM APPLICATION NO. 2133 OF 2023
IN
CRIMINAL APPEAL NO. 312 OF 2023**

Chintaman Devu Khadke

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Vinod Kashid Advocate for the Applicant

Mr. V. B. Konde Deshmukh APP for the State

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

DATE : 6th JULY 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 2nd March 2023 passed by the learned Additional Sessions Judge, Kalyan in Sessions

Case No. 209 of 2020, has been convicted along with co-accused Devu Soma Khadke as under:

— for the offences punishable under Sections 302, 324, 341, 504, 506 read with 34 of the Indian Penal Code.

— for the offence punishable under Section 302 read with 34 of the Indian Penal Code, the Applicant is sentenced to suffer imprisonment for life.

— similarly, different sentences of imprisonment has also been awarded for the other offences.

All the aforesaid sentences have been directed to run concurrently.

4. Learned counsel for the Applicant submits that the Applicant is in custody since 4th February 2020. He submits that even if the prosecution case is taken as it stands, no offence under Section 302 of the Indian Penal Code is disclosed qua the Applicant, having regard to the medical evidence, i.e. evidence of P.W. 8 Dr. Nisha Pande. He submits that at the highest, the prosecution evidence would show that

the Applicant intended to give a thrashing to the deceased and that it was not his intention to cause his death. He further submitted that the evidence of P.W. 8 Dr. Nisha Pande would reveal that almost all the injuries, except one, are on the upper and lower limbs and the back, and that the said injuries are stated to be simple in nature. He submits that in the P.M. Report, the cause of death is stated to be an internal injury, under scalp contusion of 3 cm X 2 cm over left parietal region. He submits that there is no fracture of the head, though the evidence shows that the Applicant alleged to have assaulted Nilesh (deceased) with an iron rod.

5. Learned counsel for the Applicant seeks bail on the ground of parity. He submits that this Court has suspended the sentence and enlarged the Applicant's father Devu Khadke on bail vide Order dated 6th June 2023.

6. Learned APP does not dispute the fact, that the allegations against the Applicant are more or less similar to that of Devu Soma Khadke.

7. Perused the papers, in particular the evidence of P.W. 1 Dashrath Hambir, P.W. 2 Asha Khadke and P.W. 8 Dr. Nisha Pande. As far as P.W. 2 Asha Khadke is concerned, she has turned hostile. As far as P.W. 1 Dashrath Hamir is concerned, he has stated that the Applicant and co-accused Devu Khadke were against the relationship of the Applicant's sister Asha with Nilesh (deceased) and as such, on the day of the incident, Nilesh was stopped, and chilly powder was thrown at him by the co-accused Chintaman; that thereafter, Nilesh was assaulted by the Devu Khadke with a wooden stick and by the Applicant with an iron rod. A perusal of the medical evidence i.e. evidence of P.W. 8 Dr. Nisha Pande shows that all the injuries sustained by Nilesh were simple in nature i.e. abrasions and contusions and that there was one internal injury under the scalp i.e. under scalp contusion over the left parietal region. In her cross-examination, P.W. 8-Dr. Pande has stated that all the external injuries were simple in nature and that the said injuries were possible by the impact of a hard and blunt object and was also possible if a person fell from the bike while riding the same. P.W. 8-Dr. Pande has further in her cross-examination, stated that she had

given her opinion that the injuries were possible with a stick and iron rod without looking at the articles.

8. Vide order dated 6th June 2023, we allowed the Application filed by Applicant's father-Devu Soma Khadke and as such suspended his sentence and enlarged him on bail pending the hearing and final disposal of his Appeal. The Applicant's Appeal has been admitted on 23rd March 2023 and the same is not likely to be heard in the immediate near future.

9. Considering the aforesaid, in particular the evidence on record, 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. 25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in six 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.