

3. The applicant, vide Judgment and Order dated 7th June, 2023, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No. 229 of 2018, has been convicted and sentenced alongwith other co-accused as under:

— For the offence punishable under section 302 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/-, in default to suffer simple imprisonment for one month.

4. Perused the papers. According to the prosecution, the incident took place on 16th April, 2018 between 2.00 p.m. to 2.30 p.m. There are two eye-witnesses to the alleged incident of assault by the accused on the deceased – Abdul Kayyum Sayyad. According to P.W.3 – Mohammd Amin Shaikh, on the day of incident, accused No.1 quarreled with the deceased and in that quarrel, he pulled out a knife from his waist and assaulted the deceased in his abdomen. P.W.3 - Mohammd Shaikh has not attributed any overtact to the present

applicant who is original accused No.3.

5. P.W.6 - Hasrat Gullu Badshaha Shaikh, also an eye-witness, has turned hostile and as such, his evidence cannot be considered.

6. There is an alleged oral Dying Declaration made by the deceased to P.W.1 – Sachin Sonmali, Police Naik, attached to Amboli Police Station, Mumbai. P.W.1 – Sachin, in his evidence has alleged that the deceased disclosed to him that accused No.1 assaulted him with a knife and that two sons of Salim i.e. Farhan (applicant) and Nawab had held the injured i.e. deceased when accused No.1 inflicted the blows of knife in the abdomen of the deceased. There is no recovery or any other evidence *qua* the applicant. Prima facie, there is some discrepancy with respect to what is alleged by the eye-witness and in the oral Dying Declaration made by the deceased to P.W.1 – Sachin.

7. Considering the aforesaid and the fact, that the applicant is

in custody since his arrest for about 5 years and having regard to the fact that the appeal is of the year 2023 and is not likely to be heard in the immediate near future, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail 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 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.