



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

**CRIMINAL INTERIM APPLICATION NO. 2307 OF 2023
IN
CRIMINAL APPEAL NO. 239 OF 2023**

Afzal Akhtar Sayyed

... Applicant

vs.

The State of Maharashtra

... Respondent

Mr. Niranjan S. Mundargi a/w Ms Keral Mehta, Mr. Sarthak P. Shetty i/b. Mr Ravi Dwivedi for the Applicant.

Mrs P.P. Shinde, A.P.P for the State.

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

DATED : 1st 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 5th April 2022, passed by learned Sessions Judge, Greater Mumbai in Sessions Case No. 187 of 2016, has been convicted as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- in default of payment of fine, accused to suffer further rigorous imprisonment for one year.

4. Perused the papers. According to the prosecution, the appellant murdered his mother on 20th November 2015. The prosecution case rest entirely on the circumstantial evidence i.e. extra judicial confession made to PW-6-Ali Azgar Hussain Ali Rupani; recovery of stone grinder at the instance of the applicant from the house itself on 22nd November 2015 and finding of blood stained clothes on his person. As far as motive is concerned, since the prosecution witnesses with respect to motive turned hostile, the prosecution has not proved motive.

5. So far as, extra judicial confession allegedly made by applicant to PW-6-Ali Azgar Hussain Ali Rupani is concerned, a perusal of the cross-examination of the said witness shows that he had made the said disclosure to the police on 26th November 2015, though the applicant allegedly disclosed to him about

killing his mother on 20th November 2015. There are certain omissions that have come in the cross-examination of this witness and more particularly his admission, that he would not have gone to the police for giving his statement, if the police had not called him. As far as recovery of stone grinder is concerned, the same is alleged to have been recovered from the applicants house on 22nd November 2015. It is not in dispute, that after the dead body of the applicant's mother was found on 20th November 2015, the police had searched the applicant's house. Even otherwise, there are no injury allegedly to have been sustained because of the stone grinder. Injury is stated to have been caused by a knife, which was found at the spot stained with blood only on the tip of the knife. As far as findings of blood on the clothes of the applicant is concerned, the witness with respect to the same, has turned hostile. The Chemical Analyser's report states that the blood group of both i.e. applicant and his mother are same. Apart from what is stated aforesaid, there is no other evidence. The applicant is in custody since 20th November 2015 and the appeal is not likely to be heard immediately.

6. 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 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 four 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 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.

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)