

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2533 OF 2022

IN

CRIMINAL APPEAL NO. 1017 OF 2022

Rajesh Shankar Rajiwade

...Applicant/Appellant

Versus

The State Of Maharashtra

...Respondent

Ms. Payushi Roy i/by Dr. Yug Mohit Chaudhary Advocate for Applicant /Appellant.

Mrs. M. M. Deshmukh, APP for Respondent-State.

PSI V. N. Chipde, Pali Police Station is present.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 11th DECEMBER 2023

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P.C.:-

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 1017 of 2022.
2. The applicant is convicted vide judgment and order dated 23rd December 2021 passed by learned Additional Sessions Judge, Mangaon District Raigad in Sessions Case No. 48 of 2019, for offence under Section 302 of Indian Penal Code, 1860 and sentenced to suffer imprisonment for life.
3. The case of the prosecution is that the deceased was killed by accused by strangulating him. There is no eye witness to the incident. Complaint

was lodged by son of the deceased. During the course of investigation, statements of two witnesses were recorded. According to them, the applicant had made extra judicial confession admitting that he has killed the deceased.

4. Learned Advocate for the applicant submitted that there is no strong evidence to convict the applicant in the crime. Case is based on the evidence of two witnesses viz. PW-2 and PW-3 to whom, the applicant had made extra judicial confession. It is submitted that the version of these two witnesses is doubtful. They did not approach the police on confession being made by the applicant. The FIR is lodged by son of the deceased. There is no other evidence to corroborate the version of these two witnesses. Applicant is in custody for a period about five years.

5. Learned APP submitted that trial Court has accepted the evidence of PW-2 and PW-3. Although, both these witnesses have deposed that the applicant/appellant had confessed to them about killing the deceased. The witnesses were cross-examined by the defence but could not succeed in demolishing their evidence. The trial Court has referred to the fact that there was blood stained on the t-shirt of the accused which is considered as one of the circumstance to show the involvement of the applicant. The medical evidence discloses that there was blood oozing from nose and mouth of the accused. Hence, the application for suspension of sentence may be rejected.

6. We have perused the paper-book and the evidence of the witnesses. Undisputedly there is no eye witness to the incident. Case is based on circumstantial evidence. Motive for committing crime is not very clear. Prosecution relying upon evidence of PW No.2 and PW No.3. The said witness referred to the alleged extra judicial confession made by the applicant. It is settled law that the such evidence is weak in nature. It is pertinent to note that both these witnesses had not approached the police immediately after the purported confession being made to them. FIR is lodged by son of the deceased. It is not clear as to when statement of these two witnesses were recorded. It is also pertinent to note that the report regarding blood group of the deceased was inconclusive. The applicant is in custody for five years. Considering these circumstances, case for suspension of sentence and grant of bail is made out .

ORDER

- (i) Interim Application No. 2533 of 2022 is allowed.
- (ii) Substantive sentence imposed vide judgment and order dated 23rd December 2021 passed by learned Additional Sessions Judge, Mangaon in Sessions Case No. 48 of 2019 is suspended and the applicant is directed to be released on bail on executing PR bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report concerned Police station once in a three months on first Saturday of the month between 11:00 am to 02:00 p.m. till

further orders.

(iv) Application stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)