



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2722 OF 2023
IN
CRIMINAL APPEAL NO. 840 OF 2023

Dnyaneshwar Prakash Borse	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Aniket Vagal a/w Mr. Kunal Pednekar & Mr. Divesh Mehani, for
the Applicant.

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

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 15th 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 his aforesaid appeal.

3. The applicant, vide Judgment and Order dated 3rd July, 2023, passed by learned Additional Sessions Judge, Malegaon, in Sessions Case No. 60 of 2019, alongwith other co-accused, has been convicted as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer life imprisonment and to pay a fine of Rs.2,00,000/-, in default, to suffer further rigorous imprisonment for 1 year;

The applicant is acquitted of the offence punishable under Section 201 r/w 34 of the Indian Penal Code.

4. Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears that as far as P.W.2 – Bhartabai More, P.W.3–Rajabai More and P.W.4–Kalabai Gaikwad are concerned, the said witnesses have turned hostile. The prosecution had sought to examine the said witnesses to prove the evidence of last seen to show that the applicant was following the deceased on the day of incident. As far as recovery of knife at the instance of the applicant is

concerned, learned Counsel for the applicant states that the evidence of recovery is doubtful, having regard to the evidence of P.W.1 – Nilesh Madhukar Patil.

5. In support of his submission, learned Counsel relied on para 2 of the cross-examination of P.W.1 – Nilesh, wherein Nilesh has categorically admitted that the knife was removed by Nitin Borse, when the dead body was seen at the spot.

6. Considering the admission, the recovery at the instance of the applicant, of the knife, with which he allegedly killed the deceased, appears to be doubtful. There is no evidence apart from the aforesaid.

7. Considering 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 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 three 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.

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.