

INTERIM APPLICATION NO. 2734 OF 2023
(For Bail)
IN
CRIMINAL APPEAL NO. 845 OF 2023

Ashwinikunal Ashokkumar Singh ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Mohammed Umar Kazi a/w Mr. Abdul Wahab Shaikh for the Applicant

Mr. J. P. Yagnik, Addl.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 20th DECEMBER 2023

ORAL ORDER (Per Revati Mohite Dere,J.) :

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 19th June, 2023, passed by the learned Additional Sessions Judge at Kalyan, Thane, in Sessions Case No. 128/2015, has been convicted alongwith other co-accused 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/- each, in default, to suffer rigorous imprisonment for six months;

— for the offence punishable under Section 120B r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/- each, in default, to suffer rigorous imprisonment for six months;

— for the offence punishable under Section 394 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 2,000/- each, in default, to suffer rigorous imprisonment for six months;

— for the offence punishable under Section 449 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 2,000/-, in default, to suffer rigorous imprisonment for six months;

All the aforesaid sentences were directed to run concurrently.

4 Perused the papers. The prosecution case rests entirely on circumstantial evidence. As far as the applicant is concerned, the prosecution has relied on three circumstances *qua* the said applicant, i.e. (i) recovery of articles i.e. imitation jewellery of the deceased and a cutter i.e. the weapon with which the deceased was assaulted, at the instance of the applicant; (ii) extra-judicial confession made by A1-Virendra to PW11–Siddhesh Bane; and (iii) the evidence of PW7–Kalpana Borole to show that the applicant alongwith A1, had visited her residence with intent to commit robbery/theft, prior to the incident in question.

5 Learned counsel for the applicant also seeks bail on the ground of parity. He submits that the applicant stands on a better footing than that of co-accused - Virendra, whose sentence has been suspended and who has been enlarged on bail by this Court vide order dated 27th September 2023.

6 Learned A.P.P does not dispute the fact that the role of the applicant is similar to that of A1 i.e. Virendra, whose sentence has been suspended and who has been enlarged on bail.

7 Perused the papers. As far as PW11– Siddhesh is concerned, the said witness, in his examination-in-chief, has alleged that the applicant had made an extra-judicial confession to him, however, in his cross-examination, the said witness has clearly stated that he had not stated the same in his 161 statement. The relevant paragraphs of the evidence of PW 11 are paras 15 and 16, in which the omissions have been recorded.

8 As far as the evidence of PW7–Kalpana is concerned, she has stated that the applicant alongwith his friend had come at her residence and had asked for water, however, since one of her friend stopped by, at her residence, the applicant and his friend left, after drinking water. She has further stated that when she was alone in the house after Diwali Festival, she read in the newspaper that the said boys who had come to her house, were involved in the murder of one lady. PW7 – Kalpana in her cross-examination, in paragraph 11 has admitted that she had not told anything about the accused coming to her house for drinking water. Her evidence shows that no Test Identification Parade was held for identification of the accused and that she came to know the names of the accused from the police.

9 As far as recovery of articles at the instance of the applicant i.e. imitation jewellery and a cutter, admittedly the CA report has not been placed on record by the prosecution.

10 We have perused the order dated 27th September 2023 suspending the sentence and enlarging the co-accused-Virendra, on bail. The evidence against the applicant is similar to that of co-accused-Virendra.

11 Admittedly, the applicant has no antecedents. The applicant is in custody since 23rd October, 2014. The possibility of the appeal being heard in the immediate near future also appears to be bleak.

12 Considering the aforesaid evidence on record *qua* the applicant as stated aforesaid, 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.

13 The Application is disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.