

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

**INTERIM APPLICATION NO. 2831 OF 2022
IN
CRIMINAL APPEAL NO. 935 OF 2022**

Yogesh @ Gharya Rajendra @ Rajabhau Jadhav ... Applicant
Versus
The State of Maharashtra ...Respondent

....

Mr. Niranjan Mundargi a/w Mr. Bhomesh Bellam and Mr. Keral Mehta /
by Mr. Anusha Pradhan, Advocate for the Applicant.

Mrs. M.M.Deshmukh, Addl. P.P for the Respondent – State.

....

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

DATE : 13th DECEMBER, 2023.

P.C.:

1. This is an application for suspension of sentence and grant of bail, during the pendency of the appeal challenging the Judgment of conviction.

2. The applicant has been convicted for an offence punishable under Section 302 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for life vide Judgment and order dated 17th March 2022 passed by the Additional Sessions Judge, Nashik.

3. The case of the prosecution is that the applicant and the co-accused Sumit Sandip Dindorkar had assaulted the deceased with knife. The deceased succumbed to the injuries sustained by him on account of assault. The applicant was named in the FIR.

4. Learned Advocate for the Applicant submitted that the prosecution case is based on sole eye witness to the incident, who has been examined as PW-7. Although the incident had occurred on 11.05.2015, statement of said witnesses was recorded on 15.05.2015. The Investigating Officer has not afforded any plausible explanation for belated recording statement of the said witness. The co-accused Sumit Sandip Dindorkar has been granted bail by this Court by suspending the sentence. The applicant is in custody since last eight & half years.

5. Learned A.P.P. submitted that the incident of assault is witnessed by one witness. He has supported the prosecution case. There is recovery of knife at the instance of the applicant. There is sufficient evidence to convict the applicant.

6. The evidence of PW-7 discloses that the alleged incident had occurred on 11.05.2015. The deceased was allegedly assaulted by the applicant and one another person. Both had allegedly used knife in assaulting him. The other accused to whom

the role of assault is attributed had preferred an application for suspension of sentence and grant of bail before this Court which has been allowed vide order dated 26th July 2022. No doubt apart from the merits, the Court while suspending the sentence of co-accused has considered the fact that he was not named in the FIR and there was delay of about 35 days in holding the test identification period. However, it is the case of the prosecution that the applicant and the co-accused Sumit Dindorkar were instrumental in assaulting the deceased. There has been delay in recording statement of eye witness. It is pertinent to note that the applicant is in jail since eight and half years.

7. Considering these circumstances, case for suspension of sentence and grant of bail is made out. Hence, we pass the following order:

ORDER

- i. Interim Application No.2831 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.935 of 2022, the substantive sentence of imprisonment imposed vide Judgment and order dated 17th March 2022 passed by the Additional Sessions Judge, Nashik in Sessions Case No.199 of 2016 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

- iii. The applicant shall report Indranagar Police Station, Nashik once in a three months on first Saturday of the month between 11.00 a.m. to 1.00 p.m. till further orders.
- iv. Interim Application stands disposed of accordingly.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)