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

**INTERIM APPLICATION NO. 2899 OF 2022
IN
CRIMINAL APPEAL NO. 831 OF 2021**

Mahendra Mahadeo Bhapkar ... Applicant/Appellant

vs.

The State of Maharashtra ... Respondent

Mr Rahul S. Kate, for the Applicant/Appellant

Ms. S.S. Kaushik, A.P.P for the State.

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

DATED : 7th AUGUST, 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 22nd April 2021, passed by the learned Additional Sessions Judge, Baramati,

District Pune in Sessions Case No. 112 of 2015, has been convicted and sentenced 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.25,000/- in default, to suffer simple imprisonment for six months;

4. It appears that apart from the applicant, five other persons were arraigned as accused in the said case i.e. for the offences punishable under sections 302, 498-A, 109 and 201 read with section 34 of the Indian Penal Code. After a full-fledged trial, the other 5 accused i.e. brother-in-laws, father-in-law, mother-in-law and sister-in-law of the deceased were acquitted of all the offences and the applicant was also acquitted of the offences punishable under sections 498-A, 109 and 201 of the Indian Penal Code.

5. Perused the papers. The prosecution case rests entirely on the circumstantial evidence. According to the prosecution, the

incident took place on 30th May 2015. It is alleged by the complainant- Pandurang Dada Pawar (uncle of Sonali) that he received a call at 5.00 a.m., on 30th May 2015 from Rajhans Bhapkar (brother-in-law of the applicant) who informed him that there was a dacoity at home, and that, Sonali had sustained injuries in the said incident. Pursuant thereto, Pandurang Pawar and relatives of Sonali reached Sonali's house and saw that Sonali had sustained grievous injuries on her person. Accordingly, Sonali's uncle- Pandurang Pawar lodged an F.I.R as against the applicant and 5 others alleging harassment of Sonali by all the accused on the account of dowry and consequently alleged that they murdered Sonali on account of non payment of dowry.

6. As noted above, the prosecution case rests on circumstantial evidence; i.e. recovery of a blood stained knife, at the instance of the applicant, from the house where the alleged incident of murder took place i.e. from above the fridge. It appears that the blood stained clothes of the applicant were also seized. It appears that the learned Judge essentially convicted the applicant, as the deceased was in the custody of the applicant at

the relevant time and having regard to the recovery of knife, at his instance.

7. Merely because the deceased was in the custody of the appellant cannot be a ground for convicting the applicant, in as much as, the prosecution is not absolved of its responsibility of proving its case beyond reasonable doubt. It prima facie appears that the knife was recovered after 4 days of the incident, from over the fridge, from the house itself. It is pertinent to note that nothing was recovered when the spot panchanama was prepared. Thus, recovery of the knife, prima-facie, does not appear to be free from suspicion. As far as the offence punishable under section 498-A is concerned, the applicant has been acquitted of the said offence. The applicant is in custody since 31st May 2015. The appeal is of 2022 and the same is not likely to be taken up for final hearing, in the immediate near future.

8. Considering the nature of evidence as against the applicant, and the fact, that the applicant is in custody for eight years, the application is allowed and the applicant's sentence is suspended

and he is enlarged on bail, pending the hearing and final disposal of his 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 six 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.

9. The Application is allowed in the aforesaid terms and is

accordingly disposed of.

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)