



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2878 OF 2023
IN
CRIMINAL APPEAL NO. 888 OF 2023

Virendra Ajay Naidu	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.Veerdhawal Deshmukh for the Applicant.

Mr. V.B.Konde Deshmukh, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 27th 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 19th June, 2023, passed by the learned Additional Sessions Judge at Kalyan, Thane, in Sessions Case No. 128 of 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 read with 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 read with 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 read with 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. The prosecution relies on three circumstances, i.e. (i) recovery of a diary from the applicant allegedly belonging to the deceased; (ii) extra judicial confession made to P.W.11 – Siddhesh Bane; and (iii) the evidence of P.W.7 – Kalpana Borole to show that the applicant alongwith his friend had visited her residence with intent to commit robbery/theft, prior to the incident in question.

5. Learned Counsel for the applicant submits that with respect to the aforesaid circumstances, a perusal of the evidence of the respective witnesses would show that there are omissions with respect to the same and as such, no reliance can be placed on the same.

6. We have perused the evidence. P.W.11 – Siddhesh although

has alleged in his examination-in-chief that the applicant had made an extra judicial confession to him, in his cross-examination, the said witness has clearly stated that he had not stated the same in his 161 statement. Paragraphs 15 and 16 are the relevant paras wherein the said omissions are recorded.

7. As far as the evidence of P.W.7 – Kalpana is concerned, she has stated that the applicant alongwith his friend had came 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 came to her house, were involved in the murder of one lady. P.W.7 – 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.

8. Admittedly, the applicant has no antecedents. The applicant is in custody since 21st October, 2014. The possibility of the appeal being heard in the immediate near future also appears to be bleak.

9. 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.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.