



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2911 OF 2021
IN
CRIMINAL APPEAL NO. 970 OF 2021

Mohd. Niyaz Mohd. Siraj Hashmi	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ranjit Singh for the Applicant.

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

*CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.*
DATE : 9th OCTOBER, 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 alongwith other co-accused, vide Judgment and Order dated 27th October, 2021, passed by the learned Additional Sessions Judge, Mumbai, in Sessions Case No. 88 of 2018, has been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default of payment of fine, to suffer rigorous imprisonment for one year; in addition, the applicant alongwith other co-accused has also been convicted for the offence punishable under Section 394 r/w 34 of the Indian Penal Code, and is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo rigorous imprisonment for six months. Both the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, prosecution case rests

entirely on circumstantial evidence i.e. on extra judicial confession, last seen, recovery of ornaments and recovery of weapon at the instance of the applicant.

5. As far as the circumstance of extra judicial confession is concerned, the prosecution has examined two witnesses i.e. P.W.5 – Shan Mohd. Jan Mohd. Hashmi and P.W.12 – Gulnaz Bano Shan Mohd. Hashmi. Admittedly, both the said witnesses have resiled from their statements and accordingly, declared hostile. As far as the circumstance of last seen is concerned, the prosecution has examined two witnesses i.e. P.W.9 – Sahil Sattar Shaikh and P.W.10 – Ranno Shivshankar Agrahari. As far as P.W.9 – Sahil is concerned, a perusal of his examination-in-chief does not show that the applicant was last seen in the company of deceased – Ajay Jaiswal. As far as P.W.10 – Ranno is concerned, the said witness has turned hostile. As far as recovery of ornaments is concerned, ornaments were recovered at the instance of co-accused Mohd. Sharif Shaukat Ali Shaikh and not the applicant.

6. As far as the applicant is concerned, there is recovery of a knife at the instance of the applicant. Perused the evidence of P.W.19 – Manoj Shirsat, panch to the recovery of knife. A perusal of the evidence of the said witness would show that there is nothing in the substantive evidence to suggest that the knife that was allegedly recovered at the instance of the applicant was blood stained. It is not in dispute that co-accused – Mohd. Sharif Shaukat Ali Shaikh was enlarged on bail by this Court vide order dated 25th July, 2022, pending his appeal.

7. Considering the evidence as stated aforesaid *qua* the applicant and the fact that the applicant is in custody for more than six years i.e. from 2017, 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 three months on the day/date specified by the trial Court, till her Appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of her 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.