

3. The applicant alongwith other co-accused vide judgment and order dated 2nd June 2023 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay in Session Case No. 473 of 2018 has been convicted as under:

— for the offence punishable u/s. 302 r/w. Section 34 of the Indian Penal Code, to suffer Rigorous Imprisonment for life and to pay fine of Rs.20,000/- each, in default, to suffer simple imprisonment for one year;

— for the offence punishable u/s. 342 r/w. Section 34 of the Indian Penal Code, to suffer Rigorous Imprisonment for one year and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused – Hemant Kedarnath Gaud, his sentence came to be suspended and he was enlarged on bail by this Court vide order dated 30th August 2023. He submits that the applicant was on bail pending trial and that he has

not misused or abused the conditions of bail.

5. Perused the papers. According to PW-1 Rakesh Prajapati, first informant, the incident took place on 11th April 2018. It appears that the deceased-Bindu was preparing food at home, when Hemant Gaud called him saying, that Raghu (Original Accused No. 1) had called him home. He has stated that pursuant thereto Bindu went to Raghu's house, after which, the accused closed the room, thereafter he heard Bindu shouting as he was assaulted; that one Dharmendar knocked the door, but the door was not opened; that at about 8.00 pm the door was opened and Bindu (deceased) came out from the said door; he was injured on both the arms; the three accused followed Bindu; Raghu was armed with a big danda in his hand. It is further alleged that Raghu (Original Accused no. 1) threw the danda. It is further alleged that Bindu disclosed that he was injured because he was assaulted by the accused. Thereafter, Bindu was taken to the hospital by Dharmender, Ajay and Manish Prajapati, where he came to be operated. It appears that Bindu succumbed to the injury after 15

days due to Septicemia caused by the surgery. It is the prosecution case that the applicant as well as Hemant Gaud were present behind the closed door alongwith Raghu, when the assault took place. It is not in dispute that we have suspended the sentence of Hemant Gaud and enlarged him on bail vide order dated 30th August 2023. It is also not in dispute that the applicant was on bail pending trial and that he has not abused or misused his liberty whilst on bail.

6. The motive of assault on Bindu is attributed to accused no. 1– Raghu and not to the applicant. The applicant is in custody since 2nd June 2023.

7. Considering the aforesaid, 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 aforesaid appeal, on the following terms and conditions :-

ORDER

- (i) The Applicant be released on cash bail in the sum of Rs.20,000/-, for a period of six weeks;
- (ii) The Applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- (iii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- (iv) 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;
- (v) 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. Interim Application is allowed in the aforesaid terms and accordingly disposed.

All concerned to act on the authenticated copy of this order

GAURI GODSE, J.

REVATI MOHITE DERE, J.