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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
INTERIM APPLICATION NO. 3426 OF 2023  
IN  
CRIMINAL APPEAL NO. 824 OF 2021**

|                         |               |
|-------------------------|---------------|
| Saddamhusen Najir Desai | ...Applicant  |
| Versus                  |               |
| State of Maharashtra    | ...Respondent |

Mr. Aniket U. Nikam h/f. Mr. Amit Icham for the Applicant.  
Ms. P. P. Shinde, APP for the State.

**CORAM : REVATI MOHITE DERE &  
GAURI GODSE, JJ.  
DATE : 20<sup>th</sup> 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 6<sup>th</sup> March 2021, passed by the learned Sessions

Judge, Kolhapur in Sessions Case No. 120 of 2014 has been convicted and sentences as under : -

— for the offence punishable under Section 302 r/w 149 of the Indian Penal Code, to suffer life imprisonment i.e. remainder of their life and to pay fine of Rs. 2,500/- each;

— for the offence punishable under Section 352 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 3 months and to pay fine of Rs. 500/- each, in default to suffer further rigorous imprisonment for 15 days;

— for the offence punishable under Section 147 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 2 years to pay fine of Rs. 1000/- each, in default to suffer further rigorous imprisonment for 1 month;

—for the offence punishable under Section 148 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years to pay fine of Rs. 2000/- each, in default to suffer further rigorous imprisonment for 1 month;

— for the offence punishable under Section 120B r/w 149 of the Indian Penal Code, to suffer life imprisonment i.e. remainder of their life and to pay fine of Rs. 2500/- each.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers in particular the evidence adduced by the prosecution. On 2<sup>nd</sup> February 2014, two persons i.e. Nitin Shinde and Samir Khatik were murdered. According to the prosecution, the said two deceased and the accused belonged to different groups and as such, there was a dispute between the said two groups, on account of some money transaction. According to the prosecution, the incident took place on 2<sup>nd</sup> February 2014, when the deceased alongwith their friends were standing near the house of Samir Khatik. It is alleged that the accused persons came to the spot in a Tavera Car; that they were armed with weapons; and, that they assaulted Nitin Shinde and Samir Khatik, at different spots, resulting in their death. Admittedly, the

prosecution case rests entirely on circumstantial evidence. It appears that the applicant has not been named in the FIR. It appears that there are five eye witness to the alleged incident of assault and that none of the eye witnesses have named the applicant. Eye witnesses are PW-1, PW-2, PW-3, PW-4 and PW-5. As noted above, although the said eye witnesses have not named the applicant, they have identified the applicant as being one of unknown persons who was present at the spot.

5. PW-1 to PW-5 have identified the applicant in the TIP which was conducted, however, no specific overt act has been attributed to the applicant. During the course of trial, PW-1 to PW-5 (except PW-4) have identified the applicant, also in court, however, again no specific overt act has been attributed to the applicant. As far as PW-4 Omkar Ashok Ghorpade is concerned he has resiled from his statement.

6. As far as PW-7 Jameer Tahasildar is concerned, he has not identified the applicant in the TIP. Even otherwise the said witness is not an eye witness to the incident but has seen the

accused running away from the spot. It appears that the Tahsildar who conducted the TIP was examined by the prosecution as PW-25 – Anant Gurav. The said witness in his cross examination has admitted that he had not followed the procedure mandated for conducting the TIP.

7. The applicant is in custody since 4<sup>th</sup> February 2012 till date. Appeal is of the year 2021 and the same is not likely to come up for hearing in the immediate future.

8. Considering the 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, 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 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.**