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

**CRIMINAL INTERIM APPLICATION NO. 3480 OF 2023
IN
CRIMINAL APPEAL NO. 1064 OF 2023**

Dattatray Nagnath Nagtilak ... Applicant

vs.

The State of Maharashtra and Anr ... Respondents

Mr. Nagraj Shinde, for the Applicant

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

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

DATED : 12th DECEMBER 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 the aforesaid appeal.
3. The applicant vide Judgment and Order dated 21st August 2023, passed by learned Addl. Sessions Judge, Barshi, District Solapur in Sessions Case No. 89 of 2019, has been convicted

and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 10,000/- in default, to suffer rigorous imprisonment for one year;
- for the offence punishable under Section 201 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 3,000/- in default, to suffer simple imprisonment for 6 months.

Both the aforesaid sentences were directed to run concurrently.

4. As far as co accused- Ranjit Nagnath Nagtilak; Bhagirathi Nagnath Nagtilak and Phulabai Ramchandra More i.e accused no. 2 to 4 are acquitted of the said offences punishable under sections 302 and 201 r/w section 34 of the IPC.

5. Learned counsel for the applicant submits that the prosecution case rest entirely on circumstantial evidence. She

submits that the evidence of PW 1- Bhushan Bibhishan Mohite, PW 3- Dhanaji Namdev Gund and PW 5- Santosh Shivaji Kshirsagar is that the applicant committed the said offences because of non fulfillment of dowry. He submits that the said evidence of PW 1- Bhushan, PW 3- Bhanaji and PW 5- Santosh is contrary to the evidence of Bhagirathi Nagnath Nagtilak, who was examined by the applicant in support of his defence. He submits that the prosecution in the cross-examination has suggested that the applicant and others have murdered the deceased, as deceased was insisting for staying separately. It is not in dispute that the applicant and the deceased was staying in the house alongwith their two children one studying in 2nd standard and other in 3rd standard with other members i.e. brother-in-law, mother-in-law and maternal mother-in-law of the deceased. It appears that the children of the brother-in-law was also residing in the said house at the relevant time. It is the prosecution case that the applicant and the other co-accused murdered the deceased and made it look as if the deceased has committed suicide. Learned APP submitted that the medical evidence on record would show that the deceased has not committed suicide.

6. Learned counsel for the applicant submits that the motive is alleged by the complainant i.e. PW 1- Bhushan for the first time in the supplementary statement and not in the FIR and that the same is evident from the admission made by the Investigating Officer in his cross-examination. He further submits that since there were so many persons residing in the house at the relevant time, and that since the other co-accused have been acquitted, the applicant alone cannot be foisted with the charge of murder, merely because, he is the husband of the deceased.

7. The applicant is in custody since 2018 i.e. for the last five years. The appeal is of the year 2023 and the same is not likely to come up for the hearing in the immediate near future.

8. Considering the evidence on record and the fact that the applicant is incarcerated for about 5 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 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.

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.)