

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3531 OF 2023

IN

CRIMINAL APPEAL NO. 224 OF 2016

Amar Tanaji Lokhande ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Payoshi Roy alongwith Mr. Anush Shetty instructed by Dr. Yug Mohit Chaudhary for the Applicant.

Ms. M.M. Deshmukh, APP for the State.

PSI Iqbal Gulab Mahan, Laxmipuri Police Station, present.

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**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 21st DECEMBER 2023

P.C. :-

. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.224 of 2016.

2. The Appellant is convicted vide Judgment and Order dated 16th January 2016 passed by the Learned 2nd Additional Sessions Judge, Kolhapur for the offence under Section 302 of Indian Penal Code and sentence to suffer imprisonment for life. The previous application for suspension of sentence and grant of bail was rejected by this Court vide Order dated 25th April 2018.

3. Learned Counsel for the Applicant submitted that the Applicant is in custody since last ten years. Although the previous

Application has been rejected by this Court, the Applicant has continued to be in custody even thereafter for a period of five years. The case is based on circumstantial evidence. There is no eye-witness to the incident. The prosecution is relying upon the evidence of two witnesses to establish that the Applicant has been last seen in the company of the deceased. However, their evidence suffers from serious discrepancies. PW-2 is the Police Constable. According to him, the accused was seen in company of the deceased. However, his statement was affirmed on the third day of incident. The said witness has stated that although he was not knowing the other persons accompanying the deceased, there was no test identification parade of the said witness to identify the accused as the person who accompanied the deceased. He has also stated that he saw accused on three occasions while in custody. The other witness relied upon by the prosecution is PW-5. The said person sells biryani. He has stated that he identified the accused at the police station. Prior to that he was shown the photograph of the accused. This eye-witness does not refer to any test identification parade being conducted to identify the accused.

4. Learned APP submits that although there are no eye-witness to the incident, there are strong circumstances to show the involvement of the accused. The evidence of witness who last seen the deceased and accused together indicate that the Applicant was in company of the deceased. The test identification parade was conducted by the Nayab Tahsildar (PW-6). The said witness stated that PW-5 has identified the accused as the person who accompanied the deceased. There is recovery of handkerchief at the instance of the Applicant. The medical evidence indicate that the handkerchief can be used for strangulation of the

deceased. Hence, the Application for suspension of sentence may be rejected.

5. It is pertinent to note that the Applicant is in custody for a period of about ten years. There is no eye-witness. The prosecution is relying upon the aforesaid circumstances. There was no test identification parade qua PW-2. PW-5 has stated that he has identified accused at the police station and before that police had shown him the photograph of the accused. He has not referred to participation in test identification parade. There are discrepancies in evidence.

6. Considering the nature of evidence and the fact that the Applicant is in custody for period of ten years, case for suspension of sentence can be granted.

ORDER

- (i) Interim Application No. 3531 of 2023 is allowed.
- (ii) The substantive sentence of imprisonment imposed vide Judgment and Order dated 16th January 2016 passed by the Learned 2nd Additional Sessions Judge, Kolhapur in Sessions Case No. 156 of 2013 is suspended and the Applicant is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The Applicant shall attend concerned Police Station once in three months between 11.00 a.m. and 1.00 p.m. till further orders.
- (iv) Interim Application is disposed off.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)