

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

**INTERIM APPLICATION NO. 3590 OF 2023
IN
CRIMINAL APPEAL NO. 462 OF 2016**

Chetan Suresh Awale ...Applicant/Appellant
Versus
State of Maharashtra ...Respondent

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Mr. Jayant J. Satghar, Advocate for the Applicant/Appellant.

Mrs.M. H. Mhatre, APP for the Respondent – State.

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

DATE : 30th NOVEMBER, 2023.

P.C.:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.462 of 2016.

2. The case of the prosecution is that the accused and the deceased were known to each other. On 3rd February 2014 there was quarrel between them. The accused picked up the hammer which was lying near the place of incident and gave 2 to 3 blows on the deceased. The victim succumbed to the injuries. The complaint was lodged by the wife of the deceased. The applicant

was arrested on 4th February 2014.

3. The learned Additional Sessions Judge, Pune, vide judgment and order dated 10 June, 2016 convicted the applicant for offence punishable under Section 302 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for life.

4. Learned Advocate for the applicant submitted that the applicant is in custody for a period of about 10 years. The prosecution case suffers from serious infirmities. There are inconsistencies in the evidence of the witnesses. The incident had occurred at the spur of moment. There was no intention to commit murder. The offence would not be covered by Section 302 of IPC. At the most the conviction could be under Section 304(ii) of IPC. The appeal may not reach for final hearing immediately. The applicant is in custody for substantial period of time.

5. Learned A.P.P. submitted that there is sufficient evidence to establish the charge against the applicant. The prosecution has adduced the evidence of two eye witnesses viz. PW-2 and PW-3. Both the witnesses have referred to the involvement of the applicant. They are witnesses to the incident of assault. Overt act of assaulting the deceased by hammer has been attributed to the applicant. The First Information Report (for short

‘FIR’) is lodged by the wife of the deceased. Apart from the evidence of eye witnesses, there are other circumstances which establishes the involvement of the applicant in the crime. Whether the case is covered under Section 302 of IPC or any other penal provision would be decided at the time of final hearing of the Appeal.

6. Undisputedly the applicant is in custody for a period of about 10 years. From the evidence of the eye witnesses it is apparent that the incident had occurred at spur of moment. It was not a preplanned attack. There was quarrel between the accused and the deceased. The weapon viz. Hammer was lying in the shop, where the incident took place. Both the eye witnesses referred to the quarrel being ensued between the deceased and the applicant. Witnesses have not referred to any motive for the quarrel. The wife of the deceased has stated that the accused used to call her husband frequently. In the past there were some disputes. There is no other complaint lodged against the applicant in the past. There is room for an argument which would be obviously decided at the time of final hearing of the appeal, that the offence may not be covered under Section 302 of IPC.

7. Considering the fact that the applicant is in custody for

a period of about 10 years and the aforesaid factual aspects as well as the evidence on record, case for suspension of sentence and grant of bail is made out. Hence, we pass the following order:

ORDER

- i. Interim Application No. 3590 of 2023 is allowed;
- ii. During Pendency of the Criminal Appeal No.462 of 2016, the substantive sentence of imprisonment imposed vide Judgment and order dated 10th June 2016 passed by learned Additional Sessions Judge, Pune in Sessions Case No.336 of 2014 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant shall report Kothrud Police Station, Pune once in a three months on first Saturday of the month between 11.00 am. to 1.00 p.m. till further order.
- iv. Interim Application stands disposed of accordingly.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)