

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

***INTERIM APPLICATION NO.3828 OF 2022
(FOR BAIL & SUSPENSION OF SENTENCE)
IN
CRIMINAL APPEAL NO.191 OF 2023***

Ajay Namdeo Gandhile Applicant

Vs.

The State of Maharashtra Respondent

***WITH
CRIMINAL APPEAL NO.191 OF 2023***

Ajay Namdeo Gandhile Appellant

Vs.

The State of Maharashtra Respondent

***WITH
CRIMINAL APPEAL NO.148 OF 2017***

Sanjay Namdeo Gandhile Applicant

Vs.

The State of Maharashtra Respondent

Dr. Yug Mohit Chaudhry for the Applicant-Appellant.
Ms. P. P. Shinde, APP for Respondent-State.

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***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 2nd MAY 2023.

ORDER (Per Sharmila U. Deshmukh, J.)

1. By this application, preferred under section 389 of Criminal Procedure Code, the applicant seeks suspension of his sentence and enlargement on bail pending the hearing and final disposal of the appeal.

2. The applicant alongwith other co-accused has been convicted *vide* judgment and order dated 29th and 30th August, 2016 passed by learned Additional Session Judge in Session Case No.834/2014 for the offence punishable under section 302 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- each and in default to suffer rigorous imprisonment for 6 months.

3. The case of prosecution is that on 18/8/2014 at about 3.00 a.m. to 3.30 a.m. there was a quarrel between the accused and Surendra Rai and Satyanarayan, who were working as watchman of building known as "Morya Heights"; and that PW-5-Sunita Shinde, who was sleeping on the footpath opposite the building came near the spot upon hearing the noise. It is alleged that upon noticing

PW-5-Sunita Shinde, applicant Ajay Gandhile inappropriately touched her, however, she escaped from him and went back to the place on the footpath where she was sleeping. It is alleged that thereafter both accused went to the spot where deceased was sleeping on the footpath and the applicant assaulted him with a stick and co-accused Sanjay Gandhile assaulted the deceased with a paver block. Pursuant thereto, the deceased sustained injuries on vital parts and succumbed to his injuries. The case of the prosecution rests on the eye witnesses i.e. PW-4-Surendra Rai and PW-5-Sunita Shinde.

4. Heard Mr. Yug Mohit Chaudhry, learned counsel for the applicant and Ms. P. P. Shinde for Respondent-State.

5. Mr. Chaudhry, learned Counsel for the applicant submits that the offence was alleged to have been committed on 18/8/2014 and the accused came to be arrested on 19/8/2014. He submits that the statement of the eye witness PW-4-Surendra Rai was recorded on 22/8/2014 and the statement of eye witness PW-5-Sunita Shinde was recorded on 25/8/2014 and as such there has

been delay in recording the statement. He would further submit that the evidence of the eye witnesses does not instill confidence. He would further submit that the accused are in custody since eight and half years.

6. Learned APP opposes the application.

7. Perused the evidence of PW-4-Surendra Rai and PW-5-Sunita Shinde. *Prima facie* it appears that PW-4-Surendra Rai and PW-5-Sunita Shinde have witnessed the incident and have narrated the same without any major discrepancy. Postmortem report indicates the cause of death as 'shock due to head injury'.

8. Considering the evidence of the eye witnesses, *prima facie* complicity of the appellant is seen. As regards the delay in recording the statement of PW-4-Surendra Rai and PW-5-Sunita Shinde is concerned, in the evidence PW-12-Parmeshwar Babasaheb Ganame, Police Inspector, Oshiwara Police station has given sufficient explanation for the delay. The injuries which are recorded in the post mortem report *prima facie* corroborate the

evidence of the eye witnesses.

9. Considering the above, we are not inclined to allow the application.

i) The Interim Application is rejected.

ii) Since the appellants are in custody for about eight and half years, appeals to be listed for final hearing, at the end of the admission board, on 5th July 2023.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.