

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

***INTERIM APPLICATION NO.4204 OF 2023
(FOR SUSPENSION OF SENTENCE/BAIL)
IN
CRIMINAL APPEAL NO.964 OF 2022***

Sagar Sambhaji Gole

...Applicant
Orig. Accused No.7

Versus

State of Maharashtra

...Respondent

Mr. Priyal G. Sarda for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

Ms. Poonam Bodake-Patil, for the Original Complainant.

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

DATE : 10th NOVEMBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.7) 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 30th January 2021, passed by learned Additional Sessions Judge, Pune, in Sessions Case No. 460/2015, have been convicted and sentenced as under:

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for three months;
- As far as offences punishable under Section 120B of the Indian Penal Code and Section 4 r/w 25 of the Arms Act, 1959 are concerned, the applicant is acquitted of the said offences.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that the main accused - Pappu Ganpat Uttekar's sentence has been suspended and he has been enlarged on bail by the Apex Court and that even the Review Petition filed by the complainant against the said order has also been dismissed by the Apex Court. He submits that the applicant stands on a better footing than that of accused – Pappu Uttekar and some other accused, whose

sentences have been suspended and who have been enlarged on bail. He claims parity with co-accused – Vaibhav Prabhakar Shelar, whose sentence has been suspended and who has been enlarged on bail vide order dated 11th October 2023. He submits that the applicant is in custody for last 8 years and 2 months.

5. Learned APP fairly states that there is parity with co-accused, whose sentence has been suspended and who has been enlarged on bail. She also does not dispute the fact that the applicant is incarcerated for last 8 years and 2 months.

6. Learned counsel for the respondent No.2 vehemently objected to the grant of bail.

7. On 9th November 2023, it was pointed out to us that the applicant has 3 antecedents and hence in view thereof, the learned counsel for the applicant made a submission that if the applicant is enlarged on bail, he will not enter the jurisdiction of Paud Police Station, Taluka Mulshi, District – Pune, until final disposal of his

appeal. Accordingly, we directed the applicant to file an affidavit-cum-undertaking to that effect and accordingly permitted him to affirm the said affidavit before the Superintendent, Nashik Road Central Prison. Pursuant thereto, the learned counsel for the applicant has tendered an affidavit of the applicant dated 9th November 2023. The same is taken on record. In para 2 of the said affidavit, it is stated as under:-

“2) I Say & Submit that if my present Interim Application for Suspension of Sentence/Bail will get allowed, I hereby giving my undertaking that I will not enter the jurisdiction of Paud Police Station Tal. Mulshi, Dist. - Pune, until final disposal of my Appeal.”

8. Perused the papers. The prosecution case rests on direct as well as circumstantial evidence. The sole eye-witness, in the present case, is the complainant (brother of the deceased-Eknath) i.e. PW 1-Kashinath Kudhale. Kashinath Kudhale, in his evidence, has stated that the incident took place on 1st December 2014 at about 8:30 a.m. He has stated that when he was proceeding from Rameshwar Temple, he saw a *i-10* car of his brother-Eknath standing in front of the temple; that 10 to 12

persons were quarreling with Eknath; that as he started going towards the spot, he saw that chilly powder was thrown at Eknath and that the accused were assaulting him with arms. He has further stated that applicant-Sagar Gole threw chilly powder in the eyes of Eknath; that accused-Swapnil Bhilare was armed with a sickle, accused-Mahesh was armed with chopper, accused-Anil Khatpe was armed with sickle (koyta), accused Pappu Uttekar was armed with sickle (koyta), accused Vaibhav Shelar (applicant) was armed with sword and Swapnil Khatpe was armed with a sharp weapon, accused-Hemant Godambe (Applicant) and Ram Kedari were also armed with sharp weapons. According to PW 1-Kashinath Kudhale, all the said accused started beating Eknath. He has stated that Eknath rushed towards backside of temple. He has stated that he rushed towards Eknath, however, the accused had assaulted him on his face and hands and thereafter, the accused fled from the spot.

9. It is not in dispute that Pappu Uttekar, who is alleged

to have assaulted the deceased with a sickle (koyta) and against whom, there is recovery of a sickle, his sentence has been suspended and he has been enlarged on bail by the Apex Court vide order dated 1st May 2023, on the ground that he was incarcerated for more than 7½ years.

10. As far as recovery is concerned, there is no recovery of any weapon, at the instance of the applicant. It is not in dispute that the Apex Court has granted bail to accused - Pappu Uttekar, who is alleged to have assaulted the deceased with a sickle, having regard to his incarceration. It is also not in dispute that the Review Petition filed by the complainant against the said order has also been dismissed by the Apex Court vide order dated 5th October 2023. Based on the same, we have enlarged some of the accused on bail. It is not in dispute that the applicant is in custody for about 8 years 2 months. The applicant has also filed an affidavit as stated aforesaid wherein he has undertaken not to enter the jurisdiction of Paud Police Station, Taluka Mulshi, District – Pune, until final disposal of his appeal, in

view of what was pointed out by the learned counsel for the complainant that there were 3 cases pending against the applicant and that the applicant is involved in land mafia. As far as the role ascribed to the applicant in the present case is concerned, he is alleged to have thrown a chilly powder in the eyes of Eknath, pursuant to which, the assault took place.

11. Considering what is stated aforesaid and the fact that the applicant is incarcerated for more than 8 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 aforesaid 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.50,000/-, with one or two local 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 not contact or attempt to influence the complainant, witnesses or any person concerned with the case;

iv) The applicant shall surrender his passport, if any, before the trial Court;

v) The applicant shall not enter the jurisdiction of Paud Police Station, Taluka Mulshi, until final disposal of his appeal;

vi) The applicant is, however, granted liberty to move an application for modification of clause No. (v), after two years;

vii) The applicant shall keep the trial Court informed of his current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

viii) 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.

12. The application is disposed of in the aforesaid terms.

13. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.