



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

**INTERIM APPLICATION NO. 37 OF 2019
IN
CRIMINAL APPEAL NO. 813 OF 2017**

Santosh Sukhdev Borkar ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Ravindra S. Pachundkar, for the Applicant.
Mr. J.P. Yagnik, A.P.P for the State.

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

DATED : 5th OCTOBER, 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 2nd August 2017, passed by learned Additional Sessions Judge, Malshiras, in Sessions Case No. 27 of 2015, has been convicted and sentenced

as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 2,000/- in default, to suffer imprisonment for 1 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.1,000/- in default, to suffer simple imprisonment for 6 months.

Both the aforesaid sentences were directed to run concurrently.

4. Perused the papers. The prosecution case rest entirely on the circumstantial evidence. According to the prosecution, the deceased-Rani and Applicant- Santosh Sukhdev Borkar were in an illicit relationship and that he was threatening the deceased and her children for not disclosing the same to any person. It is further alleged that on 23rd May 2014, deceased-Rani dropped her children at Palasmandal and thereafter went with two

persons on the motor-cycle after which she did not return.

5. According to the prosecution, after the deceased-Rani went missing, her brother lodged missing complaint on 25th May 2014. When PW-1-Machindra Waghmode learnt that his wife had gone missing, and when she did not return from Palasmandal at Solapur, he made inquiries. It is alleged that he learnt that the applicant used to visit his residence in his absence. It appears that on 12th June 2014, PW-1- Machindra Waghmode lodged an FIR against the applicant and an unknown person. PW-1 received information from the police that a dead body is lying at Nira River, Tawashi. Pursuant thereto, the applicant alongwith another co-accused came to be arrested. It is alleged by the prosecution that the applicant alongwith one unknown person assaulted deceased-Rani with a stone and caused an injury on her head and as such her death. Thereafter, the accused are alleged to have thrown the dead body in Nira river. As far as the co-accused is concerned, he has been acquitted. The prosecution relied upon the evidence of PW-7-Sugadabai Netwe who has stated that the applicant was last seen with the deceased-Rani and

another person. It appears that in PW-7-Sugadabai Netwe's statement which was recorded on 15th June 2014, there is an omission with respect to what has deposed by her, in her evidence. Apart from this, there is joint recovery of the stone at the instance of the applicant and the co-accused and as such, the recovery becomes doubtful. The applicant is in custody since more than 9 years. His appeal is of the year 2019 and is not likely to be heard in the immediate near future.

6. Considering the aforesaid and in particularly having regard to the fact, that the applicant is in custody for more than 9 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.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)