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

**INTERIM APPLICATION NO. 967 OF 2019
IN
CRIMINAL APPEAL NO. 424 OF 2016**

Miraj @ Shahid Siraj Tamboli ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Veerdhaval Deshmukh, Appointed Advocate for the Applicant.
Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 15th FEBRUARY, 2023

P.C. :-

. By order dated 4th January, 2023, as the earlier counsel was not appearing, this Court has appointed Mr. Veerdhaval Deshmukh to assist the Court in the matter.

2. This is an application under Section 389(1) of the Code of Criminal Procedure, for suspension of sentence and grant of bail.

3. Mr. Deshmukh, has placed on record following submissions :

(a) In view of judgment of the Apex Court in matter of ***Suleman v/s. State of Uttar Pradesh*** delivered in Miscellaneous Application No. 764 of 2022 in Criminal Appeal No. 491 of

2022 decided on 15th September, 2022.

(b) Applicant having almost completed 9 years of his period of actual detention, he is entitled to be released.

4. In addition, his contentions are the evidence of PW1, PW2 and PW3 who are claiming to be eye-witnesses to the incident if appreciated, PW1 is unable to establish the motive against the applicant. According to him, after having gone through the evidence of PW2 and PW3, it can be inferred that the presence of said witnesses on the spot is under cloud.

5. He would further urge that the role attributed to the applicant is that of use of weapon viz rod and that being so, the Court may consider the prayer for release of the applicant.

6. Learned APP opposed the prayer of by relying on the evidence of PW1, PW2 and PW3 who are eye-witnesses to the incident. According to her, there is strong evidence available on record against the applicant.

7. With the assistance, we have perused the testimony of PW1, who in cross-examination has admitted that he was not aware about the complaint made by the deceased to the applicant about the quality communal. As such, *prima-facie* it appears that the motive was not established.

8. Apart from above, the fact remains that the applicant till date has undergone already 9 years of imprisonment and considering the remission, he has already completed period of 10 years.

9. The role attributed to the applicant as stated herein above is that of use of rod.

10. In this background, we consider it appropriate to grant prayer for suspension of sentence and direct to release the applicant on bail.

11. The applicant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

12. The applicant, till the final hearing of the appeal, shall remain outside the jurisdiction of the Police Station.

13. Application stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]