

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

***INTERIM APPLICATION NO. 1184 OF 2023
IN
CRIMINAL APPEAL NO. 1012 OF 2022***

Shivraj Gurunath Mali	... Applicant
Versus	
The State Of Maharashtra And Anr.	...Respondents

Mr. Ritesh Thobde a/w Ms. Ankita Pai, for the Applicant/Appellant.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 1st FEBRUARY 2024

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 his aforesaid appeal. The applicant, by judgment and order dated 26th August 2022, passed by the learned Sessions Judge, Solapur in Sessions Case No. 25 of 2018, has been convicted

alongwith another co-accused as under:

- For the offence punishable under Section 302 of the Indian Penal Code to suffer imprisonment for life and to pay fine of Rs.20,000/- each, in default, to suffer simple imprisonment for six months.

3. Perused the papers. Learned Counsel for the applicant submits that the prosecution case rests entirely on circumstantial evidence. He submits that, admittedly the applicant had no motive to cause the death of the deceased. He submitted that in fact, motive has been attributed to accused No. 1- Bhimashankar and not to the applicant. He submits that although in the CCTV footage the accused No.1- Bhimashankar has been identified by PW- 1, 2 and 3, the applicant was identified only at the behest of the police, as is evident from the evidence on record.

4. Learned Counsel for the applicant further submits that there are discrepancies with respect to where the applicant was, at the time when the incident took place. He submits that as far as the evidence

of the I.O. i.e. PW- 17 is concerned, it appears that the applicant was standing outside the shop and not inside, as alleged by PW- 1, 2 and 3. He submits that the applicant has no antecedents.

5. We have perused the evidence. It appears that the evidence of PW- 17, I.O., shows that the applicant was outside the shop, whereas, the assault has taken place inside the shop. According to PW-17, when the deceased attempted to come out of the shop, the applicant pushed the deceased, pursuant to which, the accused No. 1- Bhimashankar stabbed the deceased. Admittedly, the applicant had not assaulted the deceased with any weapon. The applicant is in custody since 2017.

6. Considering the aforesaid, 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 on the aforesaid terms and is accordingly disposed of.

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

MANJUSHA DESHPANDE, J. REVATI MOHITE DERE, J.