

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

***INTERIM APPLICATION NO.2434 OF 2023
IN
CRIMINAL APPEAL NO.102 OF 2019***

Shivaji Bhagwat Bhalerao

.... Applicant/
Appellant

Versus

The State of Maharashtra

.... Respondent

.....
Mr.Aniket Nikam i/b. Mr.Amit Icham, Advocate for the
Applicant/Appellant.

Dr.Ashvini A. Takalkar, APP for Respondent – State.

.....

***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 2nd JULY 2024.

P.C. :

By way of this application, the applicant is seeking suspension of sentence and release him on bail during the pendency of the appeal filed by the applicant against his conviction. The applicant has been convicted by the learned Sessions Judge, Solapur, in Sessions Case No.69 of 2015, for the offence punishable under Section 302 of the Indian Penal Code (IPC) vide judgment and order dated 30th November, 2018, and sentenced him to suffer imprisonment for life and to pay fine of Rs.1000/- (Rupees One Thousand only), and in default, he was directed to undergo rigorous imprisonment for two months.

The applicant herein has preferred appeal challenging the said judgment and order. The applicant has therefore filed this application seeking enlargement on bail during the pendency and final disposal of the said Appeal.

2 It is the case of the prosecution that the informant Sangita lodged a report with the police on 2nd December, 2014, stating that she alongwith her two daughters Anjali and Aarushi aged 7 and 5 years, respectively, are residing at Taluka Mohol, District Solapur. She had a love affair with Shivaji Bhalerao since last two years. Shivaji started residing with her after her husband left for Pune. Initially, the accused behaved properly, but, after some time, he started beating and abusing her daughters. Since last some days, he was showing his arrogance frequently towards Aarushi, her younger daughter, and insisting Sangita to leave her daughters at some other place.

On 2nd December, 2014, when Sangita came back from her work, she noticed that there was crowd gathered in front of her house. When she came inside the house, she saw that her daughter Aarushi lying in a dead condition. Aarushi had sustained injuries on her head above her left ear, on left side of forehead, on left thigh etc. She found one knife, wooden rolling-pin (“Belan”) and steel spoon lying near the dead body of Aarushi. She came to know from her neighbours that the accused Shivaji was present in the house alongwith her two daughters and later on Anjali informed the neighbours that accused had beaten Aarushi. Hence, the informant filed complaint that Shivaji had committed murder of her daughter Aarushi by mercilessly beating her. On filing of the complaint,

offence was registered under Section 302 of IPC. Investigation was carried out and after the trial, the learned Sessions Judge, Solapur, by his judgment and order dated 30th November, 2018, was pleased to convict, the applicant i.e. the original accused for offence punishable under Section 302 of IPC.

3 The applicant has filed the present application on the ground that, there are contradictions and omissions in the evidence which have been overlooked by the learned Judge. The testimony of the prosecution witnesses does not inspire confidence. There is no convincing ocular evidence in order to establish the guilt of the applicant accused. It is his contention that considering the evidence on record, he has a fairly good case. He has already undergone imprisonment for the said offence from 2018, till date, therefore, his application for suspension of sentence and enlargement on bail, may be allowed.

4 We have heard the counsel for the applicant as well as the learned APP, and we have also gone through the paper book, and deposition of witnesses. Though the applicant is claiming that there is no convincing ocular evidence, Anjali Ishwar Vanjari, P.W.11, is the eye witnesses of the said incident. Anjali is the elder sister of the deceased Aarushi, who was present at the time of the incident. She has seen the accused assaulting Aarushi, and, thereafter, she has informed to the neighbours about the said assault. The said witnesses were questioned by the learned Judge, and after putting her some questions, he has certified that she is capable of forming rational opinion and giving rational answers, as such, she is a competent

witness. Thereafter, the learned Judge had proceeded to record her testimony. In her testimony, she has clearly narrated the incident, where she told that the present accused, who is before the Court, was beating Aarushi with “Belan”, on the fateful day. The accused used to call Aarushi and beat her. He has beaten Aarushi with “Belan”. After beating accused Shivaji left Aarushi where she was lying on the floor in her house. After that the accused went to his home. When her mother returned home, she told her mother that, the accused has beaten Aarushi. The said testimony of Anjali has gone uncontroverted. Nothing contrary could be elicited from the said witness in her cross-examination.

5 The case of prosecution against the accused is also supported by the spot panchanama Exhibit-22. When the spot panchanama was conducted, a rice serving spoon, one wooden rolling-pin and one iron knife without handle, were found scattered near the body of Aarushi. All these three articles were seized from the spot itself. The said spot panchanama has been supported by the evidence of P.W.No.6. The statement of Anjali that the accused had assaulted Aarushi with “Belan”, which is seized from the spot is corroborated by the spot panchanama.

6 The contention that Aarushi was assaulted with “Belan”, finds support from the postmortem report. Column no.17 of the postmortem report contains the injuries/wounds on the body of Aarushi. In the said column, there is mention of brown and black colour bruises on buttocks, lower side of waist and on both thighs. A sharp cut wound of 1 cm seize on left parietal region is also mentioned in the said postmortem report.

In the final opinion, the probable cause of death is mentioned as head injury. The postmortem report which is at Exhibit-37 has been proved by the deposition of P.W.9 Dr.Uma Waghmode. In her testimony, she has given the description of the wounds on the person of Aarushi. During her testimony, when she was shown Article Nos.2, 3 and 4, she has opined that the injuries in the column no.17 and 19, and are possible by the said articles. The testimony of said witness also could not be shattered in the cross-examination.

7 After going through the evidence and the deposition of witnesses, it is evident that the prosecution has proved its case before the Sessions Court beyond doubt, there is ample evidence on record pointing towards the guilt of the accused. The eye witness has categorically narrated the incident, which leaves no room for any doubt. There is no merit in the present application. The applicant has failed to make out a *prima facie* case for grant of bail and suspension of sentence. We do not find any error apparent in face of record to grant suspension of sentence in exercise of power under Section 389 of Cr.P.C.

Therefore, we are not convinced that the present applicant deserves to be enlarged on bail. Hence, in view of the above discussion, the present application of the applicant is rejected.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)