

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

***INTERIM APPLICATION NO.4335 OF 2023
IN
CRIMINAL APPEAL NO.882 OF 2018***

Appasaheb Suresh Dhumal ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr.Kedar J. Patil a/w. Ms.Sakshi S. Kadam and Mr.Pratik Tare,
Advocate for the Applicant/Appellant.

MrR.M. Pethe, APP for Respondent–State.

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

DATE : 11th JANUARY 2024

P.C. :

Heard the 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.

3 The Applicant *vide* judgment and order dated 5 April 2018 passed by the learned Additional Sessions Judge, Karad, in Sessions Case No.51 of 2015 has been convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months.

4 The learned counsel for the Applicant submits that the prosecution case rests on circumstantial evidence, in particular, the evidence of two witnesses, who allegedly came to the spot, post the incident of assault and saw the Applicant with a weapon. He submits that the said statement of the two witnesses could not have been relied upon by the learned Judge, having regard to the fact, that the said statements were recorded five days post the said incident. He further submits that even otherwise, having regard to the Judgment of the Apex Court in *Saudan Singh Vs. State of Uttar Pradesh* passed in Criminal

Appeal No.308 of 2022 [SLP (Cri.) No.4633/2021], the Applicant is entitled to be enlarged on bail, considering that he is in incarceration for about 10 years.

5 Learned APP opposes the Application.

6 Perused the papers. The prosecution case rests on circumstantial evidence, and, essentially on the statement of two witnesses, who saw the Applicant post the incident of assault with a weapon in his hand. It also appears that the said statements have been recorded after five days of the incident. Be that as it may, having regard to the aforesaid and the fact, that the Applicant is in custody for about 10 years, and, having regard to the decision of the Apex Court in *Saudan Singh Vs. State of Uttar Pradesh* (Supra), there is no impediment in allowing the Application.

7 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.

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

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

MANJUSHA DESHPANDE, J. *REVATI MOHITE DERE, J.*