

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO.221 OF 2024****IN****CRIMINAL APPEAL NO. 753 OF 2017**

Popat Shripati Gayakwad

... Applicant/Org.Accused No.1

V/s.

The State of Maharashtra

... Respondent

Dr. Yug M. Chaudhry a/w Mr. Anush Shetty for Applicant.

Mr. Ajay Patil, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 15th APRIL 2024

P.C. :

(1) This is a successive Application for suspension of sentence and enlarging the Applicant on bail.

(2) The earlier application, i.e. Criminal Application No.1198 of 2017 preferred by the Applicant was dismissed by an Order dated 12th September 2017. The said Order was challenged by Applicant by way of Special Leave Petition No.37242 of 2023 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its Order dated 27th September, 2023, granted liberty to the Applicant to file fresh application for same relief on the ground of change in circumstances. Present Application is filed in pursuance of the said Order dated 27th September 2023 passed by the Hon'ble Supreme Court.

(3) Dr. Yug Choudhry, learned counsel appearing for the Applicant submitted that, the trial Court in para-92 of impugned Judgment has

observed that, it is of firm opinion that the Applicant had exceeded his right of private defence, while firing a gun shot at Suryadeep (deceased), which hit at his chest. He submitted that, if the finding recorded by the trial Court is *prima facie* accepted as it is, then the case of the Applicant would fall within the purview of Exception 2 of Section 300 and therefore the offence committed by Applicant may be under Section 304(II) and not under Section 302 of the Indian Penal Code. *Prima facie* we find substance in it.

(4) Applicant as of today has undergone 7 years in incarceration. Learned counsel for Applicant submitted that, there are no antecedents at the discredit of the Applicant.

(5) In view of the above, during the pendency of the Appeal, we are inclined to suspend the substantive sentence imposed upon the Applicant and enlarge him on bail.

Hence, the following Order :-

(i) The Applicant shall be released on bail in Sessions Case No.167/2014 arising out of C.R.No.163/2014 registered with Panhala Police Station, District Kolhapur, on his furnishing P.R. bond in the sum of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(ii) After his release from jail and during the pendency of the present Appeal, the Applicant shall attend Panhala Police

Station, District Kolhapur, on every first Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Panhala Police Station, District Kolhapur, on every 1st Monday of every 3rd Month between 10:00 a.m. and 12:00 noon. The Applicant thus shall attend Panhala Police Station, District Kolhapur, four times in a year during the pendency of the present Appeal.

(iii) In case of two consecutive defaults in complying with the aforestated conditions, the Prosecution is at liberty to file an Application for cancellation of his bail.

(iv) Applicant shall inform his prospective residential address to the trial Court. The Applicant shall keep informed the trial Court of any change in his residential address and his mobile number, on which he can be contacted.

(v) Applicant shall make himself available at the time of final hearing of the Appeal.

(6) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2024.05.06
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