

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

***INTERIM APPLICATION NO.430 OF 2024
IN
CRIMINAL APPEAL NO.74 OF 2023***

Vitthal Krishna Mhaske

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Sharad Ghadge a/w Mr. Deepak Jaiswal, Mr. Naresh Jadhav and
Mr. Chinmay Sharma, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent No.1– State.

Mr. Rakesh S. Patil, for the Respondent No.2.

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

DATE : 5th APRIL 2024

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.1) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant alongwith other co-accused vide judgment and order dated 29th November 2022 passed by the learned Additional Sessions Judge, Mangaon, Raigad in Session Case No.1 of 2021 has been convicted as under:

- for the offence punishable u/s. 302 r/w. Section 149 of the Indian Penal Code, to suffer life imprisonment and to pay fine of Rs.50,000/- each, in default, to suffer rigorous imprisonment for one year;
- for the offence punishable u/s. 341 r/w. Section 149 of the Indian Penal Code, to suffer simple imprisonment for one month;
- for the offence punishable u/s. 143 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for six months;
- for the offence punishable u/s. 147 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for two years;
- for the offence punishable u/s. 148 r/w. Section 149 of the Indian Penal Code, to suffer rigorous imprisonment for three years;
- for the offence punishable u/s. 120B of the Indian Penal Code, to suffer rigorous imprisonment for two years;

All the aforesaid sentences were directed to run concurrently.

— The applicant alongwith other co-accused was however acquitted of the offence punishable under Section 188 of the Indian Penal Code and under Sections 37(1)(a) r/w 135 of the Maharashtra Police Act.

4. Learned counsel for the applicant submits that there is discrepancy in the evidence of PW1-Smitil Ganpat Mandhare and PW2–Paresh Mhaske, both eye-witnesses to the alleged incident. He submits that it is doubtful, whether PW1-Smitil and PW2–Paresh have actually witnessed the incident of assault, having regard to the evidence that has come on record. He submits that out of nine accused, eight accused have been enlarged on bail by this Court.

5. Learned APP as well as the learned counsel for the complainant, both oppose grant of bail.

6. Perused the papers, in particular the evidence of the eye-witnesses PW1-Smitil and PW2–Paresh. According to PW1-Smitil, PW2-Paresh followed his father and thereafter he (PW1) followed

them after 5 minutes. A perusal of the evidence of PW2-Paresh reveals that when he went near the spot, he saw the deceased-Ganpat was lying down and all the accused including the appellant were assaulting the deceased. PW2-Paresh has stated that the appellant came near him and raised his danduka and told him not to disclose the incident to any person. He has further stated that at that time he was aware that PW1-Smitil, was coming behind him. According to PW2-Paresh, he learnt later that the deceased was murdered.

7. As far as PW1-Smitil is concerned, he is the son of deceased-Ganpat. Although he followed PW2-Paresh, PW1-Smitil has stated that when he went near the spot, he saw the appellant gave a blow of axe on his father's head and all others assaulted his father with bamboo and stones. Thus, there is discrepancy with respect to what is disclosed by PW1-Smitil and PW2-Paresh. It is not in dispute that all the other accused in the said case have been enlarged on bail. The appeal is of the year 2023 and the same is not likely to come up for the hearing in the immediate near future.

8. 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 the aforesaid 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 the 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.

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

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.