

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1614 OF 2023****IN****CRIMINAL APPEAL NO. 152 OF 2023**

David Juran Malya @ Kochya

.....Applicant

Vs.

The State Of Maharashtra

.....Respondent

Adv. Ranjan J. Rajgor for the Applicant.

Mr. J.P. Yagnik APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****DATE : 1st APRIL, 2024.****P.C.:-**

- 1) This is an Application for suspension of sentence and enlarging the Applicant on bail.
- 2) Applicant is convicted under Sections 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life by the learned Additional Sessions Judge, Thane in Sessions case No.47 of 2016 arising out of C.R. No.49 of 2015 registered with Uttan Sagari Police Station, District Thane for commission of murder of Briandaigo Munis with a knife, on his chest.

3) Record *prima facie* indicates that, the prosecution case is based on extra judicial confession given by the Applicant to P.W. No.2 and recovery of knife at the instance of the Applicant. The trial Court has accepted the extra judicial confession given by the Applicant to P.W. No.2 as a substantive piece of evidence.

3.1) Perusal of deposition of P.W. No.2 indicates that, on 12th October, 2015 at about 10.15 a.m. he saw the Applicant running towards Uttan. Applicant was having an injury on his head and there were blood stains on his shirt and trouser. He therefore caught hold the Applicant and asked him why he was running. Applicant informed P.W. No.2 that, the deceased had demanded wine from him and when he refused, the Applicant assaulted him with fist blow on his face and due to the said fact, the Applicant assaulted the deceased with knife on his chest.

4) Evidence on record further *prima facie* indicates that, the prosecution has not explained the injuries suffered by the Applicant during the trial. If the evidence of P.W. No.2 is accepted then, *prima facie* it appears to us that, prelude for assault on the deceased by the Applicant is the demand of wine by the deceased from the Applicant and the assault of fist blow by deceased on the face of the Applicant, due to which the Applicant got enraged and thereafter assaulted the deceased with the said knife. *Prima facie* it appears that, the act of the Applicant may fall within

the purview of Section 304 (Part-II) and not under Section 302 of the I.P.C. Applicant is behind bars from 12th October, 2015 and as of today has undergone about 8 years and 6 months in incarceration.

5) Learned Advocate for the Applicant submitted that, there are no antecedents at the discredit of the Applicant.

6) In view of the above, during the pendency of present Appeal, we are inclined to suspend the sentence and release the Applicant on bail.

Hence, the following order:-

ORDER

- (i) Applicant shall be released on bail in Sessions case No.47 of 2016 arising out of C.R. No.49 of 2015 registered with Uttan Sagari Police Station, District Thane, on his furnishing P.R. bond of Rs.25,000/- with one or two local sureties in the like amount.
- (ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend Uttan Sagari Police Station, District Thane, 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 Uttan Sagari Police Station, District Thane, on every first

Monday of the every 3rd Month between 10.00 am and 12.00 noon. The Applicant thus shall attend Uttan Sagari Police Station, District Thane, 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 bail.
 - (iv) Applicant shall inform his prospective residential address to the trial Court. Applicant shall keep informed the trial Court 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.
- 7) Interim Application is allowed in the aforesaid terms.
- 8) All the concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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