

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

***INTERIM APPLICATION NO.1988 OF 2023
IN
CRIMINAL APPEAL NO.1251 OF 2022***

Ravilal Veglal Agariya

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Pradeep Pardeshi, for the Applicant.

Mr. V. B. Konde-Deshmukh, Addl.P.P for the Respondent – State.

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

DATE : 29th JANUARY 2024

P.C. :

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

3. The applicant alongwith other co-accused, vide Judgment and Order dated 13th March 2018, passed by learned Additional Sessions Judge, Raigad-Alibag in Sessions Case No. 130 of 2013, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for 6 months.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence i.e. of last seen and recovery of clothes, at the instance of original accused No.1 - Santosh. As far as last seen evidence is concerned, the prosecution has examined 3 witnesses i.e. PW4 – Babalu Sahu, PW5- Hemsing and PW6 – Umesh Varma. It is the prosecution case that the incident took place on the intervening night of 17th April 2013 and 18th April 2013. It appears that the Labour Contractor in H & R Johnson Company had supplied 7 labourers, including the 2 accused as well as the deceased, in the polishing department of the said company. It appears that all the said

persons were residing in the rooms owned by one Moreshwar Mokal. According to PW4 – Babalu, on 17th April 2013 while going to his room in the night at 10:30 p.m. he saw the deceased – Subodh and 2 accused together in a room. He has stated that thereafter he went to his room and slept between 11:00 to 11:30 p.m. PW6 – Umesh has stated that on 17th April 2013 at about 7:00 p.m, he returned from the company to his room; that after 7:00 p.m. accused No.1 met him near the railway track; that the said accused wanted liquor; that the accused No.1 called him (PW6) to his room alongwith liquor, after which he went to the room of accused No.1 – Santosh; that PW6 and accused were present in the room; that the accused No.1 and the applicant drank liquor and as PW6 was fasting, he did not consume liquor and that at about 8:30 p.m. he went back to his own room and while returning to his room, he met deceased – Subodh, near the gate of the Company and saw deceased going to his room. As far as PW5- Hemsing is concerned, he has stated that on 17th April 2013 at about 7:30 p.m. while returning to his room, he saw accused No.1 - Santosh and the applicant; that at 9:30 p.m. he had his dinner; that at 10:00

p.m. he came outside the room and saw that deceased – Subodh had returned from the company. He has further stated that when he and one Rajpal were watching T.V., he heard the noise of quarrel coming from the room where the accused were staying at about 12:00 midnight; and that the deceased – Subodh was shouting loudly. He has further stated that he did not go to resolve the conflict/quarrel because such quarrels would take place every day after which he went to sleep at around 1:00 a.m.

5. *Prima facie*, there are some discrepancies, as far as last seen evidence is concerned. Admittedly, there is no motive that has come on record, so as to point to the complicity of the applicant in the alleged crime. As far as recovery is concerned, neither weapon nor clothes have been recovered at his instance. The applicant at the relevant time was aged 19 years and is in custody for more than 9 years. The appeal is of the year 2022 and the same is not likely to come up for the hearing in the immediate near future.

6. Considering the evidence on record i.e. only the evidence of last seen and having regard to the long incarceration of the applicant, 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.20,000/- with one or two local 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.

7. 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.