

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

**INTERIM APPLICATION NO.2444 OF 2023
IN
APPEAL NO.762 OF 2023**

Ganesh Ashok Ughade

.. Applicant

V/S.

The State Of Maharashtra And anr.

.. Respondents

Mr. Ashok Mundargi Senior Advocate i/b. Shradha Sawant for the Applicant.

Mr. J.P. Yagnik, APP for the Respondent No.1-State.

Mr. Akshay Bankapur for the Respondent No.2.

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CORAM : A. S. GADKARI &

SHYAM C. CHANDAK, JJ.

DATED : 7th FEBRUARY, 2024.

PC. :

1) This is an Application for suspension of sentence and releasing the Applicant on bail.

2) The Applicant is convicted for the offences punishable under Section 302 r/w. 149 and 120(B) of the Indian Penal Code (for short, I.P.C.) and is sentenced to suffer imprisonment for life by the trial Court.

3) As noted in our Order dated 22nd January, 2024 passed in Interim Application No.3188/23 pertaining to co-accused (Original Accused No.2), the prosecution case is based on ocular evidence. One Nitin Pagare (PW-1) and Archana Nikam (PW 5) are the eyewitnesses to

the incident. Both the witnesses have categorically deposed that, on the date and time of the incident they saw the Applicant alongwith other accused persons inflicted blows of sickle on the person of Kiran Nikam.

4) *Prima facie* it appears that, the said two witnesses are fully reliable. The Applicant alongwith other accused persons alleged to have committed murder of Kiran Nikam in a most dastardly and brutal manner. As per the Medical record the deceased Kiran Nikam had sustained 101 injuries.

5) Mr. Mundargi learned senior counsel appearing for the Applicant submitted that, statement under Section 161 of Cr.PC. of PW 5 was recorded belatedly after about 17 days and there is every possibility that she had sufficient time to ponder upon and thereafter to give the statement indicting the Applicant and other accused persons. He submitted that PW 5 is wife of deceased Kiran Nikam and she also has criminal antecedents at her discredit. Therefore it cannot be said that, she was cowed down after looking the alleged attack on her husband. Though, the evidence given by her is a clear afterthought and it may be kept aside from consideration.

6) Assuming for the sake of argument, the submissions advanced by learned Senior counsel are accepted then also according to us *prima facie* the evidence of PW 1 is of sterling quality and at this stage, it is difficult for us to opine contrary to it. The role attributed to

co-accused Jitesh @ Bandu Sampat Murtadak and present Applicant is same and similar.

7) After taking into consideration overall view of the matter, we are of the opinion that, there is a prima facie sufficient material to indict the Applicant in the present crime.

According to us, this is not a fit case for grant of bail during the pendency of Appeal.

8) Interim Application is accordingly rejected.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)