

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO.2797 OF 2023****IN****CRIMINAL APPEAL NO. 902 OF 2023**

Deepak Sudam Gaikwad

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Satyajeet P. Dighe for Applicant.

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

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****DATE : 21st February 2024****P.C. :**

1) This is an application for suspension of sentence and releasing on bail by the Applicant-original accused.

2) It is the prosecution's case that, on 27th September 2015, it was Ganesh immersion day (Anant Chaturdashi). The informant (PW-1), Rohan Ghodake (deceased) and other men and women of Vande Mataram Ganesh Mitra Mandal had participated in the Ganesh Immersion. At about 08.30 p.m., when their procession reached near Girija Hotel, Tilak Road, Pune, the participants in the procession were dancing on the road. At that time, the daughter of Shripad Shelke (PW-4) had received a dash from the Applicant. Shripad Shelke (PW-4) and Prakash Bandal (PW-2) and other two persons

reprimanded the Applicant and asked him to behave properly. The Applicant begged for pardon and agreed to behave properly.

3) Subsequently, at about 12.30 a.m. in the midnight of 28th September 2015, the informant (PW-1), Prakash Bandal (PW-2) along with the deceased Rohan Ghodake were standing in front of one shop at Amit Heights. At that time, Applicant came there and asked the informant (PW-1) and others about Shripad Shelke (PW-4). The Applicant told the said persons that, though he did not dash the daughter of Shripad Shelke (PW-4), he was assaulted by PW-4 and was manhandled by other persons. Rohan Ghodake (deceased) asked the Applicant, as to why he was inquiring about Shripad Shelke (PW-4) and he would search for himself. At that time, Applicant got angry, took a shahabadi tile lying thereat and dealt a blow of it on the head of Rohan. Rohan sustained serious head injury and succumbed to his injury on 7th October 2015 while undergoing treatment at Sahyadri Hospital, Pune.

4) The aforestated facts are *prima facie* admitted facts on record. After perusing evidence on record, it *prima facie* appears that, the Applicant did not have intention to commit murder of Rohan and it was in the fit of rage, he lost his self control and assaulted Rohan with a shahabadi tile, which was lying at the scene of offence itself. Applicant did not come at the scene of offence with premeditation and equipped with any dangerous weapon. The act of the Applicant therefore may fall within the purview of

Section 304(2) and not under Section 302 of the Indian Penal Code.

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

6) Hence, the following Order.

(i) Applicant-original Accused shall be released on bail in Sessions Case No.72 of 2016, arising out of CR No. 296 of 2015 registered with Khadak Police Station, District Pune, on his furnishing P.R. bond of Rs.25,000/- with one or two 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 Khadak Police Station, District Pune, on every first Monday of the month between 10:00 am and 12:00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Khadak Police Station, District Pune, on every first Monday of the every 3rd Month between 10:00 am and 12:00 noon. The Applicant thus shall attend Khadak Police Station, District Pune, 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.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

Digitally signed
by RAJESH
VASANT
CHITTEWAN
Date:
2024.03.05
16:43:13 +0530