

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2787 OF 2023****IN****CRIMINAL APPEAL NO. 919 OF 2023**

Lalit Kashinath Bhandari

.....Applicant

Vs.

The State Of Maharashtra

.....Respondent

Adv. Sanjeev P. Kadam a/w Adv. Varsha Thorat i/by Adv. Prashant Raul for the Applicant.

Mr. S.V. Gavand APB for the Respondent-State.

Mr. Sudhir Korgaonkar, P.S.I., Malad Police Station, Mumbai present.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 20th MARCH, 2024.

PC.:-

1) This is an Application for suspension of sentence and releasing the Applicant, original Accused No.2 in Sessions Case No.195 of 2017, on bail.

1.1) Applicant is convicted under Section 149 read with Section 302 and other allied sections of Indian Penal Code and is sentenced to suffer rigorous imprisonment for life by the learned Additional Sessions Judge, Borivali Division, Dindoshi Mumbai by its Judgment and Order dated 20th April, 2022.

2) It is the prosecution case that, the deceased Hemant Rawat @ Pintu Nepali had a quarrel with the Accused No.1 eleven years prior to the date of incident. The Accused No.1 therefore had a grudge in his mind and with a view to settle his score, on the date of incident i.e. in the intervening night of 29th January, 2017 and 30th January, 2017 at about 12.30 a.m. all the three accused persons picked up quarrel with deceased and assaulted him with a cricket stump, hockey stick and waist belt. It is alleged that, the Applicant assaulted the deceased with a stump, hockey stick and so also with the waist belt.

2.1) The prosecution case is based on ocular evidence of three eye witnesses namely, P.W. Nos.2, 3 and 7.

3) Learned counsel for the Applicant submitted that, the trial Court has not believed the version of P.W. No.7 and therefore his version has not been accepted by it. Record indicates that, P.W. No.2 has ascribed role of assault on deceased with a waist belt so also with the cricket stump to the Applicant. P.W. No.3 has deposed about the participation of the Applicant in the said crime being a member of unlawful assembly and assault with fist and kick blows.

3.1) Learned counsel for the Applicant submitted that, even if the prosecution case is taken as it is, in view of the motive propounded by the prosecution, the offence alleged against the Applicant may fall within the purview of Section 304(II) and not under Section 302 of the Indian Penal

Code.

3.2) *Prima facie* it appears that, there are material contradictions with respect to use of weapon by the Applicant in present crime. Be that as it may. After taking into consideration the nature of evidence against the Applicant and the fact that the Applicant is behind bars for last more than 7 years, we are inclined to suspend the substantive sentence imposed upon the Applicant and release him on bail.

Hence, the following order:-

ORDER

- (a) During the pendency of present Appeal, Applicant be released on bail in Sessions Case No.195 of 2017 arising out of C.R. No.45 of 2017 registered with Malad Police Station, Mumbai on his furnishing P.R. bond of Rs.25,000/- with one or two solvent local sureties in the like amount;
- (b) After his release from jail and during the pendency of Appeal, Applicant shall attend Malad Police Station, Mumbai, on every first Monday of the month between 10.00 a.m. and 12.00 noon, initially for a period of one year and thereafter on every first Monday of every third calendar month i.e. four times in a year between 10.00 a.m. and 12.00 noon;

- (c) Applicant shall inform his prospective residential address to the trial Court. Applicant shall keep informed the trial Court any changes in his residential address and his mobile number, on which he can be contacted.
 - (d) If there are two consecutive defaults in marking presency as directed in para (b) above, the prosecution will be at liberty to file Application for cancellation of bail.
 - (e) Applicant shall make himself available at the time of final hearing of the Appeal.
- 4) Application is allowed in the aforesaid terms.
- 5) 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

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date:
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