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

***INTERIM APPLICATION NO.2998 OF 2023
IN
CRIMINAL APPEAL NO.459 OF 2020***

Sunil Laxman Kamadi

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Sandeep B. Satkar, for the Applicant.

Mr. R. M. Pethe, A.P.P. for the Respondent - State.

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

DATE : 8th JANUARY 2024

P.C. :

1. This is the third bail application preferred by the applicant.

2. The first bail application preferred by the applicant was dismissed as withdrawn as the Court (Coram: Revata Mohite Dere & V. G. Bisht, JJ.) was not inclined to enlarge the applicant on bail. The said order is dated 16th June 2022.

3. The applicant vide judgment and order dated 14th October 2020 passed by the learned Additional Sessions Judge, Thane, in

Session Case No. 244 of 2018 has been convicted as under:

- for the offence punishable u/s. 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for three months;
- for the offence punishable u/s. 307 of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default, to suffer further simple imprisonment for three months.

All the substantive sentences were directed to run concurrently.

4. Learned counsel for the applicant submits that the applicant is in custody since 17th March 2018 i.e. for more than 5 years. He submits that the appeal is of the year 2020 and the same is not likely to be heard in the immediate near future. He further submits that taking the prosecution case as it stands, no offence under Section 302 of the Indian Penal Code ('IPC') is made out, as against the applicant and that at the highest the offence would be one under Section 304 Part I or II of IPC, which will entail a lesser punishment.

5. Learned APP opposes the application.

6. Perused the papers. From a perusal of the evidence of PW1 an eye-witness, it appears that the incident took place on 16th March 2018 at about 2:00 p.m. when PW1 and his wife had gone to their field for removing leaves of the branches of the cashew nut tree. PW1 has in his evidence stated that all of a sudden the applicant came to the field armed with a wooden stick and inflicted blows with the stick on his wife's head, pursuant to which he came down from the tree, after which the applicant also assaulted him with a wooden stick on his head. PW1 has stated because of the assault on his wife, she sustained a bleeding injury on her head and became unconscious. He has further stated that thereafter, he took his wife to the Cottage Hospital, Jawhar and thereafter, to the Civil Hospital, Nashik, where she succumbed to the said injury on the next day. A perusal of the medical evidence reveals that PW1 had sustained an injury which is categorized as a simple in nature, caused by a hard and blunt object. It also appears that PW1's wife sustained one injury on her head i.e.

Laceration of size 7 cm X 1 cm X scalp deep over left parietal region of scalp, 4 cm above mastoid, 1.5 cm from midline. Margins of the wound were contused and irregular. The cause of death is stated to be 'Cranio-Cerebral Damage Due to Blunt Trauma to Head which is sufficient to cause death in ordinary course of nature. All injuries were ante mortem in nature, fresh in duration.'

7. It is argued by the learned counsel for the applicant that the incident took place at the spur of the moment and that at the highest the offence would be a lesser offence and not one under Section 302 of the IPC, more particularly when the weapon used is a wooden stick. The applicant is in custody for more than 5 years. The appeal is of the year 2020 and the same is not likely to be heard in the immediate near future.

8. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his 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. 25,000/- with one or two 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 his 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.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.