

VAISHALI
ANIL
TIKAM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4008 OF 2022

IN

CRIMINAL APPEAL No. 88 OF 2023

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Ganesh Shankar Mhatre

.. Applicant

vs.

The State of Maharashtra

.. Respondent

Mr. Gaurav Parkar for Applicant.

Mr. J.P. Yagnik, APP for the State.

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

DATE : 5th JANUARY, 2024

P. C.:-

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

2. The Applicant is convicted under Sections 302 and 201 of the Indian Penal Code and is sentenced to suffer imprisonment for life by the learned Sessions Judge, Raigad-Alibag by its impugned Judgment and Order dated 24th May, 2022.

3. Perusal of evidence on record indicates that, PW No.1 noticed the dead body of deceased Ms. Bhagyashree on 14th April, 2018 at about 5.00 p.m. in the mangroves, near Vadkhal Village, District Raigad. It is the prosecution case that, the Applicant committed murder of Ms. Bhagyashree

on 13th April, 2018 after 4.36 p.m. The cause of death of deceased is stated to be due to multiple injuries, including grievous injury to head. The main circumstance against the Applicant as put forth by the prosecution is, last seen together on 13th April, 2018 at about 4.36 p.m. The deceased was pillion rider on the motor cycle driven by the Applicant and the said fact was proved by the prosecution through PW No.4, who has examined the CCTV footage recorded near Dadar Sagari Chekpost at Vadkhal. The motive behind the commission of crime as propounded by the prosecution is dispute between the Applicant and deceased over monetary transaction.

4. Perusal of record prima facie indicates that, the prosecution has not produced or proved the fact regarding use of any particular weapon by the Applicant for inflicting injuries on the deceased. PW No.7, a Forensic Expert, in his cross-examination has admitted that, if a motorcycle is driven at a speed of more than 40 kilometers per hour, the visibility of face in CCTV footage is bleak. Apart from the said fact, there is substantial gap of time between deceased last seen together with the Applicant and notice of dead body by PW No.1 i.e. more than 26 hours.

5. In view of the above, we are of the opinion that, during the pendency of present Appeal, substantive sentence imposed upon the Applicant can be suspended and he can be released on bail.

6. Hence the following Order:-

- (I) Applicant be released on bail in Sessions Case No. 87 of 2018 arising out of C.R. No. 09 of 2018 registered with Dadar Coastal Police Station, Mangaon, District Raigad on his furnishing P.R. bond of Rs.50,000/- with one or more solvent local sureties to make up the amount.
 - (ii) The procedure for furnishing bail bond and sureties be completed before the trial Court.
 - (iii) After his release from jail, the Applicant shall attend Dadar Coastal Police Station, Mangaon, District Raigad on every Monday of the month between 11.00 a.m. and 1.00 p.m. initially for a period of one year and, thereafter on every first Monday of every 3rd calendar month till the disposal of the Appeal.
 - (iv) 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.)