

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

***INTERIM APPLICATION NO. 4237 OF 2022
IN
CRIMINAL APPEAL NO. 997 OF 2022***

1. Tabrej @ Tabbu Darvesh Khan
2. Salim Aktarhussain Siddique Applicants

Versus

State Of Maharashtra Respondents

Mr. Ashok P. Mundargi, Senior Counsel i/b Mr. Nitin Sejpal & Mrs. Pooja Sejpal, for the Applicants.

Mr. V. B. Konde Deshmukh, A.P.P for the Respondent – State.

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

DATE : 17th JANUARY 2024

P.C. :

1. Heard learned Counsel for the parties.
2. At the outset, learned Senior Counsel for the applicants does not press the application qua applicant No.1, at this stage. He

states that liberty be granted to the said applicant to prefer a fresh application for bail after one year.

3. As far as the applicant No.2 is concerned, learned Senior Counsel for the applicant No.2 seeks suspension of the applicant No.2's sentence and enlargement on bail, pending hearing and final disposal of his aforesaid appeal.

4. The applicant No.2 vide Judgment and Order dated 22nd September, 2022 passed by the learned Additional Session Judge, Dindoshi, Mumbai, in Sessions Case No. 290 of 2017, has been convicted as under :

- for the offence punishable under Section 302 read with Section 34 of the I.P.C., to undergo rigorous imprisonment for life and pay fine of Rs.1,000/-, in default S.I. for 10 days;

- for the offence punishable under Section 392 read with Section 34 of the I.P.C., to undergo rigorous imprisonment for 5 years and pay fine of Rs.1,000/-, in default S.I. for 10 days;

- for the offence punishable under Section 427 read with Section 34 of the I.P.C., to undergo rigorous imprisonment for 1 year and pay fine of Rs.1,000/-, in default S.I. for 10 days;

- for the offence punishable under Section 201 read with Section 34 of the I.P.C., to undergo rigorous imprisonment for 1 year and pay fine of Rs.1,000/-, in default S.I. for 10 days. All the substantial sentences were directed to run concurrently.

5. Perused the application. The prosecution case rests on direct as well as circumstantial evidence. The prosecution has examined three eye witnesses in the said case, i.e. P.W.1 – Gulab Shaikh; P.W.6 – Jaffar Shaikh; and P.W.7 – Dharmendra Verma. As far as P.W.6 – Jaffar Shaikh and P.W. 7 – Dharmendra Verma are concerned, both the said witnesses have turned hostile.

6. From a perusal of the evidence of P.W.1 – Gulab Sahab, it appears that the incident took place on the night of 17th April, 2017, post dinner. It is the prosecution case, that Tabrej @ Tabbu came to the

spot and told them that they were removing their nets and he would show that other people had put nets. Pursuant thereto, all of them i.e. Tabrej @ Tabbu, the applicant No.2, Jaffar, Dharmendra and Shoaib (deceased) went in the boat. It is the prosecution case, that when the boat was in the middle of the lake, Tabrej @ Tabbu removed a knife and asked for the mobile phones of all the persons; that Tabrej @ Tabbu threw the mobile phones of all the persons in the water, and thereafter, assaulted Shoaib with a knife; that after assaulting Shoaib, Tabrej @ Tabbu pushed Shoaib in the water; and, when Shoaib tried to get in the boat, Tabrej @ Tabbu assaulted Shoaib on his neck. According to P.W.1 – Gulab, the applicant No.2 “started beating”.

7. Learned Senior Counsel submitted that it is not clear from the evidence of the P.W.1 – Gulab as to whom the applicant No.2 assaulted. He submitted that, recovery of a knife, at the instance of the applicant No.2 is of no consequence, in as much as, there is nothing to show, that the applicant No.2 was armed with a knife or that he assaulted Shoaib with a knife. He submits that even the knife has no

blood stains. He further submits that the applicant No.2 is in custody since 2017, for more than 6 years.

8. Considering the evidence qua the applicant No.2, as stated above, the application is allowed, and accordingly the applicant No.2's sentence is suspended and he is enlarged on bail, on the following terms and conditions.

ORDER

- (i) The applicant No.2 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 No.2 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 No.2 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 qua the applicant No.2 is allowed in the aforesaid terms, and is accordingly disposed of.

10. As far as, the applicant No.1 is concerned, we make it clear that we have not heard his prayer for bail on merits. Hence, the prayer for bail by the applicant No.1 is disposed off as not pressed, with liberty, as prayed for.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.