

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 4645 OF 2023****IN****CRIMINAL APPEAL NO. 1386 OF 2023**

Shivaji @ Anna Chandrakant Pawar

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Ms. Vrushali L. Maindad a/w Shaheen S. Kapadia and Ms. Shrushti S. Tupe
for Applicant.

Ms. A.A. Takalkar, APP for Respondent No.1-State.

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

DATE : 12th February 2024

P.C. :

- 1) This is an application for suspension of sentence and releasing on bail by the Applicant-original Accused No.1.
- 2) Heard Ms. Maindad, learned counsel for Applicant and Ms. Takalkar, learned A.PP. for Respondent No.1-State. Perused record.
- 3) Applicant is convicted under Section 302 read with Section 149 of the Indian Penal Code by the trial Court and is sentenced to undergo rigorous imprisonment for life.
- 4) Perusal of record *prima facie* indicates that, PW-1, PW-2 and PW-8 have assigned different weapons to the Applicant. PW-1 has assigned the role of throwing chili power in the eyes of the deceased; and assault with

sword. PW-2 has assigned the roll of weapon, namely, sattur. Medical Officer (PW-9), who conducted autopsy on the dead body of Vithal Pawar, had stated that, the injuries mentioned as contusions and contused lacerated wounds, can be caused by blunt edge of sword (Article 43) and not by sharp edge. He had further deposed that, the said similar injuries can also be caused by Article 42.

5) *Prima facie* we find substance in the contention of learned counsel for the Applicant that, he had no intention to commit murder of the deceased, as he did not used sharp edge of weapon while assaulting the deceased.

6) Applicant has as of today undergone approximately 9 years and 5 months in incarceration.

7) In view of the guidelines issued by the Hon'ble Supreme Court in the case of Saudan Singh Vs. The State of Uttar Pradesh in Criminal Appeal No. 308 of 2022 [@ SLP (Crl.) No. 4633 of 2021], dated 25th February 2022 and the view expressed in cases of (i) Suleman Vs. The State of Uttar Pradesh, Criminal Appeal No. 491 of 2022 (Arising out of SLP (Crl) No. 1451 of 2022) dated 25th March 2022 and (ii) Dinesh @ Paul Daniel Khajekar Vs. State of Maharashtra & Anr., Criminal Appeal No. 2987 of 2023 (Arising out of S.L.P. (Crl.) No. 10320 of 2023) dated 25th September 2023, the Applicant is entitled to be released on bail during the pendency of Appeal.

8) Hence, the following Order.

- (i) Applicant-original Accused No.1 shall be released on bail in Sessions Case No. 181/2014, arising out of CR No. 68 of 2014 registered with Vairag Police Station, District Solapur, 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 Vairag Police Station, District Solapur, 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 Vairag Police Station, District Solapur, on every first Monday of the every 3rd Month between 10:00 am and 12:00 noon. The Applicant thus shall attend Vairag Police Station, District Solapur, 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.

9) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)