

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

***INTERIM APPLICATION NO. 326 OF 2024
IN
CRIMINAL APPEAL NO. 127 OF 2024***

Dattatray s/o Ananda Patil	 Applicant
<i>Versus</i>	
The State of Maharashtra	 Respondent

Mr. Abhishek Kulkarni a/w Mr. Sagar Wakale, for the Applicant.

Mrs. P. P. Shinde, A.P.P., for the Respondent – State.

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

DATED : 2nd APRIL 2024.

P.C.:

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.
3. The applicant vide Judgment and Order dated 7th November 2023, passed by the learned Additional Sessions Judge, Kolhapur, in Sessions Case No. 76 of 2021 has been convicted for the offence punishable under Section 302 of the Indian Penal Code

(I.P.C.), and is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo further simple imprisonment for one year.

4. Perused the papers. The prosecution case essentially rests on 2 eye witnesses, i.e. PW- 7- Yash Patil, aged 5 years and PW-8 – Shravani Patil, aged 9 years, both eye witnesses to the alleged incident of assault by the applicant on the deceased, i.e. the mother of PW-7 and PW-8. The prosecution has also relied on the disclosure made by one of the daughters to PW- 13- Vasant Aarade, that the applicant had assaulted her mother.

5. We have perused the evidence of PW-7 – Yash and PW-8 Shravani. It is pertinent to note, that in their cross-examination the said witnesses have admitted that, it was true that their maternal uncle had told them to state that they had slept with their mother, and that the father, i.e. the applicant had assaulted their mother with a hammer on her head, as a result, she sustained injuries and succumbed to death. Several other admissions have come in the cross-examination of both these witnesses, which *prima facie* make it doubtful, whether the said witnesses had

witnessed the incident in question, i.e. assault by the applicant on the deceased. As far as PW-13 – Vasant Aarade's evidence is concerned, there is an omission with respect to the disclosure made by the applicant's daughter to the said witness of assault by the applicant on her mother. A perusal of the cross-examination of PW-13 reveals, that the deceased was suffering from mental ailment, and that the villagers were complaining about the violent behavior of the deceased, when she had a stroke of the said mental ailment, i.e. that the deceased used to speak irrelevant and attack on the people, with whatever weapon she found, when she had the stroke.

6. The applicant is in custody since 2020. The appeal is of the year 2024, and is not likely to be heard in the immediate future. Hence, considering the evidence on record, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, on the following terms and conditions.

: ORDER :

- (i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/-, 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;

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

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.