

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

***INTERIM APPLICATION NO.1090 OF 2024
IN
CRIMINAL APPEAL NO.692 OF 2016***

Raju Ashok Nagare ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Shahren Pradhan for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State.

***CORAM : REVATI MOHITE DERE &
SHIVKUMAR DIGE, JJ.***

DATE : 11th DECEMBER 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 aforesaid appeal.
3. The applicant alongwith other co-accused vide Judgment and Order dated 19th September 2016, passed by the learned District

Judge-8 and Additional Sessions Judge, Nashik, in Sessions Case No.303 of 2014 has been convicted for the offences punishable under Sections 302, 143, 147, 148 r/w 149 of the Indian Penal Code; under Section 4 r/w Section 25 of the Arms Act and under Section 37(1) r/w 135 of the Maharashtra Police Act. For the offence punishable under Section 302 r/w Section 149 of the Indian Penal Code, the applicant has been sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for 15 days. This is the maximum sentence imposed on the applicant. Different sentences have been awarded for the other offences. All the sentences are directed to run concurrently.

4. Learned counsel for the applicant seeks bail on the ground of parity as well as on the ground of long incarceration of the applicant. Learned counsel relied on the observations made in the order dated 8th February 2024 passed by this Coram (Coram: Sarang V. Kotwal & Shivkumar Dige, JJ.) in the Interim Application preferred by co-accused – Sanjay Ashok Nagare being Interim Application

No.3295 of 2023. He submits that apart from there being several discrepancies in the ocular and medical evidence, even if the prosecution case is taken as it stands, the offence if any, would be a lesser offence and not one under Section 302 of the Indian Penal Code, having regard to the manner in which the incident had taken place.

5. Perused the papers in particular the order dated 8th February 2024 passed by this Court in the Interim Application preferred by co-accused – Sanjay Ashok Nagare. This Court whilst releasing co-accused – Sanjay Ashok Nagare during the pendency of the aforesaid Criminal Appeal vide order dated 8th February 2024 has in paras 11 to 13, observed as under:-

“11. We have considered these submissions. As noted earlier, there is change in circumstance from 11.9.2017 when the Applicant’s bail application was first rejected. After that more than six years have passed. From that point of view, we have considered the evidence. The evidence of PW-11 Mangesh Jadhav shows that some quarrel was already going on at around 9.15 p.m. on that day. This witness went to the spot. At that time he saw that the accused Ashok Nagare and Mandabai Nagare were beating Sagar. This witness tried to intervene. At that point of time, the other accused held him

and then blows were given to Sagar. Thus, there is scope to believe that Sagar was not assaulted immediately though he was alone initially. It is only after PW-11 and others reached the spot, the incident escalated further wherein the accused Raju Nagare gave a blow with knife on the chest.

12. There are allegations that the Applicant had also assaulted with a sword. Therefore, the question would remain whether there was common object of the assembly and whether there was premeditation and meeting of minds between all the accused to commit this assault on Sagar. This question will have to be decided at the final hearing stage. At this stage, the Applicant's role can be distinguished from that of the main accused Raju Nagare, who had given the fatal blow.

13. The postmortem notes show the injuries. The cause of death is mentioned as 'hemorrhagic shock due to stab injury in chest'. The other injuries were not described as fatal injuries. Therefore, after the Applicant's arrest, his period of custody for more than 7 years & 5 months, can be taken into consideration for grant of bail."

6. From the evidence of the eye-witnesses, it *prima facie* appears that the incident took place pursuant to some quarrel between the parties *inter se* which escalated, pursuant to which the applicant gave a blow with a knife on the chest of the deceased. Co-accused – Sanjay Nagare is also alleged to have assaulted the deceased with a sword in his back. It is not in dispute that the applicant is in custody

for more than 8 years. It may be noted, that this is the third application preferred by the applicant, seeking suspension of his sentence and enlargement on bail. The first application was rejected on merits by this Court (Coram: S. S. Shinde & Mrs.Mridula Bhatkar, JJ.) vide order dated 3rd September 2018. Both, the said judges have retired since then. The second application preferred by the applicant was withdrawn. The same is recorded in the order dated 4th February 2021 passed by this Court (Coram: Smt. Sadhana S. Jadhav & N.R. Borkar, JJ.) in Interim Application No.252 of 2021. From a perusal of the said order it is apparent that the said application was not heard on merits. It is not in dispute that all the co-accused in the said case have been released on bail.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and the applicant is enlarged on bail, pending the hearing and final disposal of the aforesaid 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.30,000/- with one or two solvent sureties in the like amount;

- ii) The applicant shall report to the trial Court, once in three 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.

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

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

SHIVKUMAR DIGE, J.

REVATI MOHITE DERE, J.