

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

***INTERIM APPLICATION NO. 1621 OF 2024
(For Bail/Suspension of Sentence U/S. 389 of Cr.P.C.)
IN
CRIMINAL APPEAL NO. 131 OF 2024***

Vishal @ Sayba Mohan Surwase ... Applicant

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Priyal G. Sarda, Ms. Seema Dighe, Mr. Shubham Sane and
Mr. Rajesh Ranglani and for the Applicant/Appellant

Ms. Gauri S. Rao, A.P.P for the Respondent No.1-State

Mr. Ajit V. Alange for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
TUESDAY, 30th JULY 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 vide judgment and order dated 20th January 2023 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 162/2021 has been convicted for the offence punishable under Section 302 of the Indian Penal Code (`IPC') and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to undergo further imprisonment for one month. Compensation has also been awarded to the wife and son of the deceased under Section 357-A of the Code of Criminal Procedure of Rs. 50,000/- and Rs. 25,000/- respectively.

4 Perused the papers. It is the prosecution case that the applicant killed the deceased-Nitin in the intervening night of 26th-27th March 2021 by throwing a stone on his head. The motive alleged by the prosecution is that the deceased-Nitin was having illicit relations with the applicant's widowed sister.

5 The prosecution case rests on circumstantial evidence i.e. (i) motive, (ii) last seen and (iii) recovery of blood stained clothes at the instance of the applicant.

6 As far as motive is concerned, the prosecution has examined PW1-Parshuram @ Balasaheb Ubale and PW7-Mahesh @ Masaji Ubale to prove the same. Both the said witnesses have expressed suspicion on the applicant since the applicant did not like the relations between the deceased and the applicant's widowed sister.

7 As far as last seen is concerned, the prosecution has examined PW4-Babasaheb, PW5-Prashant Gaikwad and PW6-Ravindra Pattipaka. All the said witnesses have stated that on 26th March 2021, they saw the deceased and the applicant together in the evening between 8:00 to 9:00 p.m. Admittedly, the statements of the said witnesses, though the witnesses belong to the same village, have been recorded after 5 days of the incident.

8 As far as recovery of blood stained clothes at the instance of the applicant is concerned, it appears that the CA report shows that the blood stained clothes seized at the instance of the applicant had 'A' blood group, which blood group was found on the clothes of the deceased. Admittedly, the result of the blood of the applicant and the deceased, is inconclusive.

9 Considering the aforesaid evidence on record and the fact that the applicant is in custody since 2021, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following conditions:

ORDER

- i) The applicant 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 shall report to the trial Court, once in six 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.

10 The application is accordingly disposed of.

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.