

3. The applicant, vide Judgment and Order dated 22nd February, 2023, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No. 101 of 2011, has been convicted, alongwith other co-accused, for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine, to suffer simple imprisonment for 10 days.

4. Learned Counsel for the applicant seeks bail on the ground of parity. Learned Counsel relied on the orders dated 24th April, 2023 and 10th July, 2023, by which, co-accused – Satish Soman Kurup and Tambi @ Dinesh @ Jesudas Paulraj Pille were enlarged on bail by this Court. He submits that infact, the applicant stands on a better footing than the said co-accused.

5. Perused the papers. The incident is alleged to have taken

place on 16th March, 2021. It is the prosecution case that in the said quarrel, the applicant alongwith other co-accused assaulted the deceased-Asif with a wooden stick and iron rods. In the said incident, the deceased – Asif succumbed to the injuries sustained by him.

6. The prosecution, in support of its case, examined six witnesses. Out of the said six witnesses, five witnesses were eye-witnesses i.e. PW1 to PW5. As far as PW1, PW2 and PW5 are concerned, the said witnesses have not supported the prosecution case as they turned hostile.

7. As far as PW4 is concerned, the said witness has disclosed that a quarrel took place between the accused and the deceased and that in the said quarrel, co-accused Tambi assaulted Asif (deceased) with a rod, on his head, pursuant to which, Asif fell down; thereafter, co-accused – Satish assaulted Asif (deceased) with a rod on his face and hand and the applicant – Akhil assaulted Asif with a wooden stick.

8. Learned APP does not dispute that similarly placed co-accused have been released on bail. There is no recovery at the instance of the applicant. The applicant was on bail, pending trial, and there is nothing placed on record before us to show that the applicant has abused or misused the conditions of bail.

9. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his 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. 15,000/- 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 allowed in the aforesaid terms and is accordingly disposed of.

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

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.