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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2029 OF 2024
IN
CRIMINAL APPEAL NO. 515 OF 2024

Nitesh Anil Mishra ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Chintan Shah i/b Ms. Shabana Syed for the Applicant.

Mr. Ajay S. Patil, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**
DATE : 23rd AUGUST 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 18th April, 2024, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No. 84 of 2017, has been convicted as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer further rigorous imprisonment for one month;
- for the offence punishable under Section 324 of the Indian Penal Code, to suffer simple imprisonment for one year;

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. The prosecution case rests on direct evidence of eye-witnesses (PW1, PW4 and PW5). As far as PW4 and PW5 are concerned, the trial Court has discarded the ocular evidence

of these witnesses, however, relying on the ocular evidence of PW1, the learned Judge has convicted the applicant as stated aforesaid. We have perused the evidence of PW1. *Prima facie*, it appears that the incident had taken place on the spur of the moment. In the said incident, the applicant assaulted PW1 with a knife, used for cutting fruits, on his left thigh and the deceased- Sajid on his shoulder and back.

5. The applicant is in custody from 3rd December, 2016, for almost 8 years. The appeal is of the year 2024 and the same is not likely to be heard in the immediate near future.

6. 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. 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.

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.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.