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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2131 OF 2024
IN
CRIMINAL APPEAL NO.556 OF 2024

Santosh Shahaji Rathod Applicant
v/s.
State of Maharashtra Respondent

Mr. Salman Pathan for the Applicant.

Mr. K. V. Saste Addl.P.P. for the Respondent-State.

CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.

DATE : 8th JULY, 2024

P.C. :

1. Heard learned Counsel for the respective parties.
2. By this application preferred through the Maharashtra Legal Services Authority, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant vide judgment and order dated 1st April, 2024 passed by the learned Additional Sessions Judge, Pune in Sessions Case

No.865 of 2018, has been convicted and sentenced as under :-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5000/- in default, to suffer simple imprisonment for six months.

4. Perused the papers. The prosecution case rests on a solitary eye witness i.e. P.W.5-Urmila Ghogare and circumstantial evidence i.e. two dying declarations; extra judicial confession and recovery of a knife. We may note, that as far as the two dying declarations, extra judicial confession and recovery evidence are concerned, the learned Judge has disbelieved the said evidence. Thus, the conviction is based, primarily on the evidence of the solitary eye witness i.e. P.W.5-Urmila Ghogare. From the evidence of P.W.5-Urmila, it appears that the appellant stopped in front of the deceased-Damodar Jabal; and started quarreling with him; that Damodar (deceased) slapped the applicant twice and they both dragged each other near Sancheti Masale company wall, where the applicant is alleged to have beaten the deceased in his stomach. According to P.W.5, when Santosh was proceeding on motor cycle, he saw that the applicant-accused keeping a knife in his pocket. He has

stated that he saw blood oozing out of deceased's stomach, pursuant to which he narrated the incident to Ramesh Hargude. Learned counsel for the applicant submits that it is pertinent to note that Ramesh Hargude, has not supported the prosecution's case.

5. Learned counsel for the applicant submits that evidence of the solitary eye witness cannot be relied on. He further submits that even if the prosecution case is taken as it is, it appears that the incident is an outcome of a sudden quarrel. He submits that the appeal is of the year 2024, and the applicant is incarcerated for about six years and that the Appeal is not likely to be heard immediately, in near future.

6. Considering the evidence on record, and what is stated 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 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.

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

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

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.