

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

**INTERIM APPLICATION NO. 3634 OF 2024
IN
CRIMINAL APPEAL NO. 357 OF 2019**

Santosh Ashok Shardul alias Nakul .. Applicant

Versus

State of Maharashtra
At the instance of Tilak Nagar Police
Station, Mumbai .. Respondent

**WITH
CRIMINAL APPEAL NO. 356 OF 2019
WITH
INTERIM APPLICATION NO. 3158 OF 2024
WITH
INTERIM APPLICATION NO. 228 OF 2019
IN
CRIMINAL APPEAL NO. 356 OF 2019
WITH
CRIMINAL APPEAL NO. 357 OF 2019
WITH
CRIMINAL APPEAL NO. 516 OF 2019
WITH
CRIMINAL APPEAL NO. 536 OF 2019
WITH
CRIMINAL APPEAL NO. 553 OF 2019**

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Mr. Prashant Nayak, for the Applicant.

Ms M.M. Deshmukh, APP, for the Respondent – State.

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**CORAM: NITIN W. SAMBRE &
MANJUSHA DESHPANDE, JJ.
DATED : 8th OCTOBER, 2024**

P.C:-

1. The Applicant is seeking suspension of sentence and grant of bail having been convicted in Sessions Case No. 1133 of 2013 by the Court of Sessions, Greater Bombay, vide Judgment and Order dated 02.02.2019. The Applicant/Accused No. 3 came to be convicted and sentenced for an offence punishable under Section 302 of the Indian Penal Code and also under other Sections and is ordered to undergo rigorous imprisonment for life.

2. It is the case of the Applicant that, though he is convicted on 02.02.2019, he has suffered incarceration for a period of more than 11 years. It is claimed that the role attributed to the Applicant/Accused No. 3 is that of use of tile so as to assault the deceased on his head. It is claimed that the testimony of the Doctor PW 29 reveals that the cause of death was due to hemorrhagic shock with multiple stab injuries to chest corresponding the internal injuries. As such it is claimed that the Applicant had no intention or motive to kill the deceased.

3. Apart from above it is claimed that, the Accused No. 1 Suresh Kamble is already released, vide order dated 01.04.2024 in Interim Application No. 4229 of 2023.

4. As such, the appointed counsel submits that the Applicant deserves to be released on bail by suspending his sentence.

5. The learned APP, Ms Deshmukh would oppose the prayer, as according to her the case of the Applicant cannot be treated as par with that of co-accused Suresh Kamble, as the said accused was released on technical ground and not on merit.

6. Apart from the above it is claimed that, once the Applicant was having common intention this Court should be slow in exercising discretion in favour of the Applicant.

7. We have appreciated the said submissions.

8. It can be born out of the record, particularly based on the testimony of PW 29 the Doctor, who has performed postmortem and certified the cause of death that, the deceased died due to hemorrhagic shock, as he suffered multiple stab injuries.

9. The eye witnesses have claimed that the Applicant assaulted the deceased with a tile on his head and such act attributed to the Applicant cannot be said to be a cause for his death in view of testimony of PW 29.

10. Even if, co-accused Suresh Kamble is ordered to be released on technical ground, the similar circumstances are equally available in the case in hand, as the Applicant has suffered incarceration for a period of more than 11 years.

11. Considering the nature of role attributed to the Applicant as compared to that of Accused No. 1 Suresh Kamble, who is already ordered to be released, in our considered opinion, since the Appeal is also not likely to be heard in recent future, we deem it appropriate to allow the Application directing release of the Applicant. Hence, the following order:-

: ORDER :

(i) The Applicant shall be released on bail in Sessions Case No.1133 of 2013 arising out of C.R. No.288 of 2013 registered with Tilak Nagar Police Station, Mumbai, on his furnishing P.R. bond of Rs.25,000/- with one or two local sureties in the like amount.

(ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend Tilak Nagar Police Station, Mumbai, on every first Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Tilak Nagar Police Station, Mumbai, on every first Monday

of the every 3rd Month between 10.00 am and 12.00 noon. The Applicant thus shall attend Tilak Nagar Police Station, Mumbai, four times in a year during the pendency of the present Appeal.

(iii) In case of two consecutive defaults in complying with the aforestated conditions, the prosecution is at liberty to file an application for cancellation of bail.

(iv) The Applicant shall inform his prospective residential address to the trial Court. The Applicant shall keep informed the trial Court any change in his residential address and his mobile number, on which he can be contacted.

(v) The Applicant shall make himself available at the time of final hearing of the Appeal.

12. Interim Application is allowed in the aforesaid terms.

13. All the concerned to act on the basis of an authenticated copy of this Order.

(MANJUSHA DESHPANDE, J.)

(NITIN W. SAMBRE, J.)