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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3158 OF 2024
AND
INTERIM APPLICATION NO. 228 OF 2019
IN
CRIMINAL APPEAL NO. 356 OF 2019

Rahul Ashok Shardul ...Applicant/Appellant
Versus
The State of Maharashtra ...Respondent

Mr. Santosh M. Deshpande for the Applicant.

Mrs. Kranti T. Hiwrale, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.**
DATE : 25th FEBRUARY, 2025

P.C. :

1. Heard learned Counsel for the parties.
2. By these interim applications, 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 2nd February, 2019, passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No. 1133 of 2013, arising out of C.R.No.288 of 2013 registered with the Tilak Nagar Police Station, Mumbai, has been convicted alongwith other co-accused for various offences including offence punishable under Section 302 of the Indian Penal Code. For the said offence, the applicant has been sentenced to suffer imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine, to suffer simple imprisonment for one month. Separate substantive sentences have been awarded for each of the offences. All the sentences were directed to run concurrently.

4. Learned Counsel for the applicant seeks suspension of the applicant's sentence and enlargement on bail, both on merits, as well as long incarceration. Learned Counsel for the applicant relied on the

orders passed by this Court in Interim Applications filed by the co-accused – Suresh Maruti Kamble and Santosh Ashok Nakul dated 1st April, 2024 and 8th October, 2024 respectively.

5. Perused the papers including the orders relied upon by the applicant. It appears that co-accused – Suresh Kamble’s sentence was suspended and he was enlarged on bail essentially on the ground of long incarceration after relying on the Judgment of the Apex Court in the case of *Saudan Singh v/s The State of Uttar Pradesh*¹ and other Judgments.

6. As far as co-accused - Santosh Ashok Shardul alias Nakul is concerned, he was released on bail, both, on merits as well as on the ground of long incarceration.

7. The applicant is in custody from 12th September, 2013 i.e. for almost 12 years. The prosecution case rests essentially on the evidence of two eye-witnesses i.e. PW-1 – Ravi Gupta and PW-4 –

1 Cri.Appeal No. 308-2022 (@ SLP (Cri) No. 4633 of 2021)

Shetu Kanbarkar. According to PW-1 – Ravi, the applicant assaulted the deceased with a chopper and co-accused – Suresh assaulted the deceased with a knife and another co-accused – Naresh Owai assaulted the deceased with a sword. The other co-accused have also been attributed a role by the said witness.

8. According to PW- 4 – Shetu, some accused assaulted the deceased with two knives. The said witness has not identified any of the accused who assaulted the deceased nor has assigned any role to the applicant. Thus, *prima facie*, there is some discrepancy with respect to the weapon with which, the applicant is alleged to have assaulted.

9. As far as recovery is concerned, it appears that there is recovery of a knife at the instance of the applicant. According to the learned Counsel for the applicant, the recovery of knife is doubtful, inasmuch as, the applicant is alleged to have used a chopper and not a knife. It is not in dispute that the applicant is in custody for more

than 12 years. Similarly placed co-accused – Suresh and Santosh have been enlarged on bail.

10. 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 attend the Tilak Nagar Police Station on the first Monday of alternate month from 10.00 a.m. to 12.00 noon i.e. six times in a year.
- iii) The applicant shall keep the concerned Police Station informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) The applicant shall not contact any witness concerned with the case, during the said period;

v) If there are two consecutive defaults in appearing before the Police Station, a report be submitted to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

11. The Applications are allowed in the aforesaid terms and is accordingly disposed of.

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

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.