

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3909 OF 2024**

**IN**

**CRIMINAL APPEAL NO.1083 OF 2023**

Deepak Shrirang Shinde

.... Applicant/Appellant

Versus

The State of Maharashtra

.... Respondent

Ms. Shubhada Khot with Ms. Ameeta Kuttikrishnan & Ms. Shambhavi Desai, for the Applicant in IA/3909/2024.

Ms. P. P. Shinde, APP for the Respondent-State

**CORAM : REVATI MOHITE DERE &**

**DR. NEELA GOKHALE, JJ.**

**DATE : 24<sup>th</sup> February 2025.**

**P.C.:-**

1) By this Interim Application, the Applicant seeks suspension of his sentence and enlargement on bail pending the hearing and final disposal of the aforesaid appeal.

2) The Applicant along with other co-accused vide judgment and order dated 18<sup>th</sup> January 2019 passed by the Learned Additional Sessions Judge, Pune, in Sessions Case No.347 of 2015 has been convicted for the offence punishable under Section 302 read with 149

of the Indian Penal Code ('IPC') to suffer imprisonment of life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months. For the offence punishable under Section 307 read with 149 of the IPC, the Applicant is sentenced to suffer rigorous imprisonment of 10 years and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months. In addition, the Applicant has also been sentenced to suffer imprisonment for the offences punishable under Sections 143, 147 and 148 of the IPC. Separate sentences have been awarded for the said offences. All the said sentences are directed to run concurrently.

3) Perused the papers. The prosecution case essentially rests on ocular evidence i.e. in particular, the evidence of P.W.-1-Rajesh Manohar Swamti and P.W.-11-Lakhan Kumar Gaikwad. According to the prosecution, the incident took place on 14<sup>th</sup> February 2015, i.e. one incident at Sanket Hotel at around 04.30 p.m. and the second incident at around 05.30 p.m. at Wasim's garage. According to P.W.1-Rajesh, he went alongwith P.W.11- Lakhan and Rama (deceased) to Sanket Hotel, for consuming liquor, when Accused No.6-Raju Hake and the Applicant- Deepak came to the Hotel. P.W.1-Rajesh has stated

in his evidence that there was an oral altercation between Rama (deceased), P.W.11- Lakhan on the one hand and Raju-Accused No.6 on the other hand, pursuant to which Rama (deceased) assaulted the Applicant with a beer bottle on his neck. That after the said incident, the Applicant and Raju left the hotel. P.W.1-Rajesh has further stated that he told Rama (deceased) and Lakhan (P.W.11) that they should get the matter settled, after which they proceeded to the garage (where the 2<sup>nd</sup> incident took place). According to P.W.1-Rajesh, Accused No.6- Raju, Accused No.5- Deepak, Accused No.3- Omkar, Accused No. 2- Jacky @ Mahesh, Accused No.4-Vicky Ohal and Accused No.1- Nagesh Gaikwad were standing in front of the garage; that Lakhan (P.W.11) and Raju (Accused No.6) entered the garage and were talking to each other; that when he heard Lakhan (P.W.-11) shouting, he entered the garage; that he saw Accused No.6-Raju assaulting Lakhan with a silencer on his head; that he tried to rescue Lakhan (P.W.11) however, Jacky@ Mahesh (Accused No.2) came from behind and assaulted him with a Sura on his back; that when he came out of the garage, he saw Jacky (Accused No.2) assaulting Lakhan (P.W.11) with a weapon; and Vicky (Accused No.4) and Omkar (Accused No.3) assaulting Rama (deceased) with a *Hatiyar*, as a result of which Rama

lost his balance and fell on the ground. According to P.W.1-Rajesh, all the accused assaulted Rama (deceased) with stones. It thus, appears that P.W.1 has assigned a general role to the Applicant that he assaulted Rama (Deceased) with stones along with the other accused. As far as the P.W.11-Lakhan is concerned, he has in his evidence deposed that the Applicant alongwith other accused assaulted Rama (deceased) with cement blocks, whereas, two accused assaulted Rama with a Sura.

4) Learned counsel for the Applicant submits that taking the prosecution case as it stands, no offence under Section 302 of the IPC is disclosed. She submits that the offence will be one under Section 304 (Part 1) or (Part 2) of the IPC. She submits that the Applicant has already undergone about 10 years of imprisonment. She submits that considering the role assigned to the Applicant i.e. he assaulted Rama with stones, a general omnibus statement, and considering the Applicant's long incarceration, the Applicant's sentence be suspended and he be enlarged on bail. She further submits that the Applicant has no antecedents.

5) We have perused the evidence of P.W.1-Rajesh and P.W.11-Lakhan. It appears that P.W.1-Rajesh has assigned a general role to the

Applicant i.e. assault by stones alongwith other accused, whereas, P.W.11-Lakhan has alleged that the Applicant alongwith other accused assaulted the victim with cement blocks. The cause of death is a result of knife used in the commission of the crime by some other accused (not the Applicant). Whether or not the offence will be under Section 302 of the IPC or a lesser offence is a matter which will be considered when the Appeal is heard. Considering the role of the Applicant and his long incarceration, 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.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)