

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4974 OF 2024

IN

CRIMINAL APPEAL NO.525 OF 2018

Rahul Kailash Tiwari

.....Applicant

In the Matter in Between:

Sumeet Kailash Tiwari & Anr.

.....Appellants

Vs.

The State of Maharashtra & Anr.

.....Respondents

Mr. Ramesh Dube Patil, with Ms. Iraa Dube Patil, Mr. Ashish Gabhale, i/b. Jay & Co, for the Applicant.

Mrs. P. P. Shinde, APP, for Respondent No.1-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 10th FEBRUARY 2025.

P.C.:-

- 1) Heard learned counsel for the parties.
- 2) By this Interim 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 along with another co-accused- Sumeet was convicted vide judgment and order dated 22nd March 2018 passed in Sessions Case No.79 of 2015 by the learned Additional Sessions Judge, Nashik for the offence punishable under Section 302 read with 34 of the Indian Penal Code. For the said offence, the Applicant was sentenced to suffer imprisonment for life.

4) Perused the papers. The prosecution case rests essentially on ocular evidence i.e. the evidence of 5 witnesses. According to the witnesses, in particular, P.W.1-Mangal, the incident took place on 8th December 2014 when she along with her husband- Shantilal (Deceased) were going towards Village: Savaki from their house. According to P.W.1, their motorcycle slipped near a water pillar as a result of which water pillar broke. The said water pillar was in the agricultural field of Kailash Baban Tiwari (father of the applicant), resulting in a quarrel between the parties. According to P.W.1, Kailash and the Applicant asked them to pay cost and started assaulting deceased Shantilal. P.W.1 has stated that Kailash, Sumeet and the Applicant assaulted her husband and her brother- Sandeep as well as her. She has stated that the said persons assaulted them with an axe, spade and sticks. After the said assault, all these persons were alleged to have left the spot. It appears that Kailash i.e. the Applicant's father was acquitted of the offence since the learned Judge has disbelieved his presence at the spot. As

far as Sumeet is concerned, he is enlarged on bail by this Court vide order 23rd January 2023. It appears that the incident took place at the spur of the moment and was not a premeditated act. The deceased sustained a single injury as is evident from the evidence of P.W.9, Dr. Swapnil Parakh. The Applicant is languishing in jail since his arrest for about 10 years without remission and about 12 years with remission. The Appeal is of the year 2018 and as such, is not likely to be heard in near future. It is also pertinent to note that this Court (*Coram: Nitin W. Sambre & N.R.Borkar, JJ*) vide order dated 30th October, 2023 had granted liberty to the Applicant to file fresh application if the appeal is not heard within one year. It does not appear that the said application was heard on merits.

5) Considering what is stated hereinabove, the Application is allowed and the Applicant's sentence is suspended and he is enlarged on bail pending the hearing and final disposal of the aforesaid 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.15,000/-, 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.

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

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

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
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