

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

INTERIM APPLICATION NO.5334 OF 2024
IN
CRIMINAL APPEAL NO.1346 OF 2024

Vikram @ Vikki Dattatray Dhadiwal ...Applicant/Accd.
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Aniket Vagal a/w Ms. Savvy Kolhekar and Mr. Kunal Pednekar for the Applicant.

Ms. Kranti T. Hiwrale, A.P.P for the Respondent No.1-State.

***CORAM: REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.***

DATE : 24th APRIL 2025

PC. :

1. Heard learned counsel for the parties.
2. By this 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 alongwith other co-accused vide Judgment and Order dated 11th December 2024, passed by learned Additional Sessions Judge, Niphad in Sessions Case No. 06 of 2021, has been convicted for the offence punishable under Sections 302 r/w 34 of the Indian Penal Code ('IPC'). For the said offence, the applicant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for 6 months.

4. Perused the papers. The prosecution case rests on direct as well as circumstantial evidence i.e. evidence of the eye-witnesses and dying declaration. According to the prosecution, the incident took place on 1st September 2020, on account of a previous quarrel that had taken place between Manik Shinde (deceased) on the one hand and the applicant and the other co-accused, on the other. The said dispute was on account of the accused persons creating a ruckus in a temple, near the house of the deceased persons. It is the prosecution case, that the accused persons would drink liquor and smoke ganja, near the house of the deceased persons; and, that the

accused persons, a week prior, had threatened to kill Manik Shinde (deceased). According to the prosecution, the incident took place on 1st September 2020, when the applicant alongwith co-accused-Ajay Dhadiwal were proceeding through the road near the temple, when they saw Manik Shinde; that the accused started assaulting Manik; that Manik's father, Pundalik Shinde on seeing the assault on his son, Manik, went to rescue him, pursuant to which, he too was assaulted by the accused persons, including the applicant. It is the prosecution case, that the applicant assaulted both the deceased by fist and kick blows, whereas, co-accused-Ajay assaulted the deceased with a knife, pursuant to which, both Manik and Pundalik succumbed to the said injuries. It appears that both, Manik and Pundalik succumbed to their injuries, 2 days after the incident. Pundalik while undergoing treatment gave his dying declaration which was recorded by PW8-Suresh Chaudhari, Police Sub-Inspector attached to Chandwad Police Station. In the dying declaration made to PW8-Suresh, it appears that Pundalik had disclosed the manner in which the incident had taken place. PW8-Suresh, in his evidence has disclosed that Pundalik

disclosed to him, that both the accused persons assaulted him and his son-Manik; that when he went to rescue Manik, co-accused – Ajay pulled out a knife from the pocket of his trouser and assaulted Manik with a knife on his neck saying that he will finish him; that co-accused-Ajay again assaulted Manik with a knife on his back, pursuant to which Manik fell down; that at that time, the applicant assaulted him; that co-accused-Ajay assaulted him on his abdomen and thigh with a knife. The evidence of the doctor shows that Manik had sustained 5 stab wounds caused by co-accused-Ajay. The cause of death of Manik is stated to be ‘Death due to shock due to injury to left carotid artery.’ As far as Pundalik is concerned, Pundalik appears to have sustained 4 stab injuries and 2 contusions. The 2 contusions are, one on the left side of the chest, and the other on the right knee joint. The cause of death of Pundalik is stated to be ‘Death due to shock due to injury to vital organs.’ It appears that one of the injury caused by the knife is fracture of rib cage.

5. The evidence of the eye-witnesses i.e. PW3-Sagar Shinde, PW4-Ramrao Shinde, PW5-Shailaja Shinde, PW6-Narendra Dhamne, PW9-Rajendra Vidhate and PW10-Eshwar Shinde (a child witness) is consistent with respect to the roles played by the accused persons. All the said witnesses have stated that the applicant assaulted both the deceased with fists and kick blows whereas co-accused-Ajay assaulted them with a knife.

6. Learned counsel for the applicant submits that the evidence on record would show that the intention of the applicant was to only beat and teach the deceased a lesson and that there was no intention to kill the deceased. He submits that the evidence on record would show that co-accused-Ajay had pulled out a knife from his pocket and assaulted both the deceased with the knife, resulting ultimately in their death. He submits that the intention of co-accused-Ajay cannot be attributed to the applicant. He submits that at the highest, the applicant would be liable for a lesser offence and not for an offence punishable under Section 302 r/w 34 of the Indian Penal Code.

7. Be that as it may, considering the evidence on record, the role of the applicant i.e. of assault by fists and kick blows, the fact that the applicant is in custody for about 4 years and 7 months and that the appeal is of the year 2024 and the same is not likely to come up for hearing in the near future, 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 as well as the concerned Police Station, once in four months on the day/date specified by the trial Court/concerned Police Station, 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.

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

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

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.