

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

***INTERIM APPLICATION NO.1268 OF 2025
IN
CRIMINAL APPEAL NO.290 OF 2017***

Anil Jagannath Yadav ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Bharat Manghani for the Applicant

Mr. R. M. Pethe, A.P.P. for the Respondent-State.

***CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.***

DATE : 3rd OCTOBER 2025

P.C. :

1. This is the third application preferred by the applicant seeking suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

2. The first application of the applicant was rejected on merits by this Court (Coram : V. K. Tahilramani & M. S. Karnik, JJ.) vide order dated 21st April 2017, passed in Criminal Application No.493 of 2017. Hon'ble Smt. Justice V. K. Tahilramani, has retired

since then and Hon'ble Shri Justice M. S. Karnik, is presently sitting at Kolhapur Bench. The said order is at Exhibit - 'C' on page 40 of the application. The second application of the applicant was withdrawn by the learned counsel for the applicant, with liberty to file a fresh application for bail in the event the appeal preferred by the applicant is not taken up for hearing within a period of one year from the date of the order. The said order dated 20th March 2024 passed by this Court (Coram : A. S. Gadkari & Shyam C. Chandak, JJ.) in Interim Application No.961 of 2024 is at Exhibit - 'D' on page 45 of the application.

3. Although, the aforesaid appeal was kept for final hearing on two or three occasions, we were unable to take up the said appeal for final hearing due to pendency of more than 80 admission matters on board, every day. The applicant is in custody with remission for about 11 years and without remission, a little over 9 years.

4. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

5. The applicant alongwith other co-accused, vide Judgment and Order dated 3rd March 2017, passed by the learned Additional Sessions Judge-5, Nashik, in Sessions Case No. 01 of 2011, has been convicted and sentenced for the offence punishable under Sections 302 and 307 r/w 34 of the Indian Penal Code. As far as the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code is concerned, the applicant has been sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/, in default, to suffer rigorous imprisonment for three months.

6. Perused the evidence with the assistance of the learned counsel for the applicant and the learned A.P.P. for the respondent-State. It appears that there is one eye-witness to the said case i.e. PW1 – Dinesh Rajaram Patil. PW1 is an eye-witness and also an

injured witness. The evidence of PW1 reveals that the applicant and another co-accused – Prabhat assaulted the deceased – Yogesh by knife on his chest, back, thigh and on his ribs and Rahul, a juvenile is stated to have assaulted PW1 on his waist and on his left hand, by knife. In the cross-examination of PW1 it has come that *'It is correct to say that I cannot tell specifically as to which accused had made assault on a particular part of the body of Yogesh. I am not able to tell as to how many blows were given on particular part of the body of Yogesh by the accused and from what direction.'* Column 17 of the postmortem report of deceased – Yogesh reveals that Yogesh has sustained two injuries (i) CLW on left arm 2 X 0.5 cm; (ii) Abrasion on left side of back, 3 in number 0.5 cm size each. The cause of death is stated to be *'Shock due to injury to vital organ (Heart) and Haemothorax Right side due to stab injury'*. It is the prosecution case that Yogesh sustained a single fatal injury, as a result of which he scummbed to the same. Having perused the evidence of PW1, it appears that in paragraph 4 of his evidence, PW1 has stated that the applicant alongwith co-accused – Prabhat assaulted the deceased – Yogesh by

knife on his chest, back, thigh and on ribs, whereas the injuries are as noted aforesaid. Thus, according to the learned counsel for the applicant the prosecution is not certain as to who gave the fatal blow. Learned counsel for the applicant relied on the judgments of the Apex Court in particular, the judgment of *Ninaji Raoji Boudha & Another v/s. State of Maharashtra*¹, in support of his submission.

7. Considering the aforesaid and considering the fact, that the applicant is incarcerated for more than 9 years without remission and 11 years with remission and since we are unable to take up the aforesaid appeal for final hearing, the application is allowed and the applicant's sentence is suspended and the applicant 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.25,000/- with one or two sureties in the like amount;

¹ 1976 SCC (2) 117

- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of the 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.

SANDESH D. PATIL, J.

REVATI MOHITE DERE, J.