

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

**INTERIM APPLICATION NO.4078 OF 2023
IN
CRIMINAL APPEAL NO.1223 OF 2023**

Nijam Asgar Hashmi .. Applicant
v/s.
State Of Maharashtra .. Respondent

Ms. Sana Raees Khan a/w. Mr. Aniket C. Pardeshi for the Applicant.
Mr. S.V. Gavand, APP for the Respondent-State.

**CORAM : A. S. GADKARI &
SHYAM C. CHANDAK, JJ.
DATE : 8th April, 2024.**

PC. :

- 1) This is an Application for suspension of sentence and releasing the Applicant on bail.
- 2) Heard Ms. Khan learned Advocate for the Applicant and Mr. Gavand learned APP for the State. Perused record.
- 3) It is the prosecution case that, the Applicant was having an affair with Ms. Geetanjali Ingale, the cousin sister of Umesh Ingale (deceased). Umesh Ingale used to go to Balaji Fitness Club, a gym, situated at Bibawewadi, Pune. The Applicant also used to attend the said Gym. That, on 16th June 2018, Umesh Ingale (deceased) left home to attend the said gym but did not return. Ganesh Gaikwad-P.W. No.6, had seen Umesh (deceased) in the company of Applicant lastly on 16th June 2018 at about

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6.00p.m. As per the prosecution case, Applicant and deceased were seen in CCTV footage, together at about 7.50p.m. allegedly somewhere near the place where the decapitated body of Umesh was noticed by Vilas Raut-P.W. No.12, on 19th June 2018 at about 10.30a.m. who in turn informed the said fact to Basavraj Ujne-P.W. No.1. The P.W. No.1 thereafter informed the said fact to Police. Applicant came to be arrested on 21st June 2018 and while in police custody, at his instance weapon used in the present crime that is 'Sattur' (Article E), PAN Card and Mobile Phone of deceased came to be recovered from a ditch/pond near the canal. The trial Court by its impugned Judgment and Order dated 30th September 2023 convicted and sentenced the Applicant under Sections 302 and 201 of the Indian Penal Code.

3.1) The aforementioned facts are deciphered from the evidence on record.

4) It is important to note here that, though the weapon used in the present crime was recovered from a ditch/pond in presence of P.W.2, from a place filled with water upto knee level, the Chemical Analyser Report mentions that, human blood was found on the said weapon. Prima facie we are unable to accept the case of the prosecution to that extent. Even otherwise there is a substantial gap between the Applicant seen last together with the deceased and finding of dead body of the deceased after about three days.

5) Applicant is behind the bars since the date of his arrest i.e. 21st June 2018 and has undergone more than 5 years and 6 months in incarceration as of today.

6) In view of the above during pendency of the Appeal we are inclined to suspend the sentence of the Applicant and enlarge him on bail.

6.1) Hence, the following Order.

- (i) Applicant shall be released on bail in Sessions Case No. 623 of 2018 arising out of F.I.R. No. 348 of 2018 registered with Kondhawa Police Station, Pune on his furnishing P.R. bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- (ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend Kondhawa Police Station, Pune, on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Kondhawa Police Station, Pune, on every first Monday of the every 3rd Month between 10.00 am and 12.00 noon. The Applicant thus shall attend Kondhawa Police Station, Pune, four times in a year during the pendency of the present Appeal.

- (iii) In case of two consecutive defaults in complying with the aforestated conditions, the Prosecution is at liberty to file an Application for cancellation of bail.
 - (iv) Applicant shall inform his prospective residential address to the trial Court. Applicant shall keep informed the trial Court any change in his residential address and his mobile number, on which he can be contacted.
 - (v) Applicant shall make himself available at the time of final hearing of the Appeal.
- 7) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)