

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1 OF 2020
IN
CRIMINAL APPEAL NO. 653 OF 2018**

Deepak Dalvirsingh Sisodiya

....Applicant/
Orig.Appellant

Versus

The State of Maharashtra and anr.

....Respondents

Mr. Rajendra Rathod, advocate for the applicant/appellant.

Mr. V. B.Konde – Deshmukh, APP for the State.

Mr. Pradip Gharat, Spl. PP for the CBI..

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 29th SEPTEMBER, 2020.

P.C. :

1. Heard Mr. Rathod, learned counsel for the applicant as well as Mr. V. B. Konde – Deshmukh, learned APP for the respondent -State and Mr. Gharat, learned Special Counsel for the CBI.

2. This is a successive bail application filed at the instance of the applicant - Deepak Dalvirsingh Sisodiya, who was accused No.9 before the Special Judge, Greater Bombay, in MCOC Special Case No.19 of 2011 along with Special Case No.7 of 2012 and Special Case No. 15 of 2016.

3. In support of its case, the prosecution has examined as many as 155 witnesses and also placed on record voluminous record in the form of documentary evidence. On appreciation of the evidence, by way of judgment running into 598 pages, the learned trial Court was pleased to convict and award sentence of life imprisonment to the present applicant.

4. It is not in dispute that at various stages, the applicant was before this Court viz. prior to commencement of trial by filing criminal bail application No.1726 of 2014 and post judgment of the trial Court by filing criminal application No.1402 of 2018.

While considering the criminal bail application no.1726 of 2014, the learned Single Judge of this Court was pleased to observe that in spite of considerable length of time, the applicant who was behind the bars for three years, the trial was not commenced and, accordingly, the application was allowed.

The Division Bench of this Court, in detailed order dated 7th January, 2009 passed in criminal application No.1402 of 2018, was pleased to consider the submissions of the learned counsel appearing for the applicant. It was submitted before this Court that the learned trial Court committed serious error in appreciating the evidence. It was also submitted before this Court that there was no sufficient evidence before the trial Court to arrive at conclusion that the present applicant was aware of any conspiracy being hatched by the other accused person. The

learned counsel for the applicant also laid a critical attack on the evidence in the form of confessional statement. Apart from these grounds touching to the merit, another ground viz. physical disability of the applicant was also pressed. It was submitted before this Court that left leg of the applicant is amputated way back in the year 1992 and he was required to take painkillers continuously. The Division Bench of this Court dealt with the submissions on merits as well as the ground of physical disability of the applicant and could not find any favour with the applicant. It may not be out of place to refer to the relevant observations of the Division Bench in the order dated 7th January, 2019, which reads as under :

“6.....As far as the recording of confession is concerned, all the submissions made by learned Counsel Mr. Rathod can be considered only at the final hearing stage and at this stage, we cannot go in depth and we cannot analyze the evidence in detail to find out whether the confession was made properly or it is vitiated. It remains a matter of appreciation of evidence.”

Even the ground that the applicant was on bail during the trial and had not misused the liberty granted to him was also considered by the Division Bench in paragraph 9 of the order. The ultimate opinion formed by the Division Bench was the appreciation and the scrutiny of the

evidence is an exercise which can be undertaken at the stage of final hearing and merely because the applicant was enlarged on bail during the trial is no ground to allow the application. Thus, the Division Bench, in conclusion, opined in unequivocal terms that it was not inclined to grant relief to the applicant. Resultantly, the application was rejected.

5. Being aggrieved by the order of the Division Bench, the applicant approached the Hon'ble Apex Court by presenting special leave petition. The learned counsel appearing for the applicant, by inviting our attention to the observation to the order of the Hon'ble Apex Court dated 25th November, 2019, submitted that in view of the liberty granted to the applicant to file fresh application, the present application is submitted in this Court. It is, then, submitted by the learned counsel for the applicant that it may take longer time to hear the appeal finally considering the large number of pending appeals.

6. The learned counsel for the applicant reiterated the submission which was made before the Hon'ble Apex Court viz. the petitioner had already undergone actual imprisonment for a period of 5 years and odd. He further submitted that there is no sufficient material brought by the prosecution so as to hold the applicant guilty of the offences charged against him. Thus, the learned counsel prayed for applicant's enlargement on bail during the pendency of the appeal.

7. Mr. Gharat, learned Special Counsel for the for the CBI and Mr. Konde-Deshmukh, learned APP for the respondent-State submitted before this Court that the appreciation of the evidence is the exercise which this Court may undertake at the time of the hearing of the appeal as not only the present applicant submitted the appeal before this Court but they are other appellants also who have filed their respective appeals challenging the judgment of conviction and sentence awarded to them.

8. It is not in dispute that the erroneous appreciation of the evidence and physical disability of the applicant were the grounds raised in the earlier application No.1402 of 2018 and the Division Bench was pleased to consider these grounds on the backdrop of the evidence before the trial Court. At the cost of repetition, we state that the none of the grounds raised by the applicant could find any favour and resultantly the application No.1402 of 2018 was rejected.

9. Though the learned counsel for the applicant vehemently submitted before us that the applicant had already undergone the actual imprisonment for more than 5 years and minimum sentence provided for the offence in question is 5 years, we are unable to appreciate this ground for the simple reason that on consideration of the evidence, the trial Court held the applicant guilty and awarded maximum sentence i.e.

imprisonment for life. We also find considerable merit in the submission of Mr.Konde-Deshmukh, learned APP for the State and Mr. Gharat, learned Special Counsel for the CBI that the exercise of appreciation of evidence is not possible at this stage. The learned Special Counsel for the CBI was justified in submitting before this Court that there is no substantial change in the circumstances. Considering all these grounds, we are of the opinion that the application is devoid of merit and the same deserves to be rejected. Accordingly, the application is rejected.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)