

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 768 OF 2019
IN
CRIMINAL APPEAL NO. 713 OF 2019**

Sushant Vilas Pathare

....Applicant

Versus

The State of Maharashtra

....Respondent

Mr. Ganesh K. Gole along with Mr. Ateet Shirodkar and Mr. Ritesh Ratnam, advocates for the applicant/appellant.
Ms. M. M. Deshmukh, APP for the State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 3rd FEBRUARY, 2021.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. The applicant is before this Court by way of the present application seeking his enlargement on bail during the pendency of the appeal. Needless to state that the applicant who was the original accused before the learned Trial Court in Sessions Case No.216 of 2016 was convicted and awarded sentence for commission of offence punishable under Section 302 of the Indian Penal Code, 1860 vide judgment and

order dated 9th April, 2019 and the appeal challenging the judgment and order of the Trial Court is admitted by an order dated 12th June, 2019, passed by the Division Bench of this Court.

3. Learned counsel for the applicant vehemently submitted before this Court that the entire case of the prosecution rests on a circumstantial evidence and the prosecution failed to either establish each and every circumstance and/or establish a chain of these circumstances pointing out a finger towards the applicant/appellant only. It is orally submitted by learned counsel for the applicant that apart from the grounds raised in the application, there are other grounds pressed for the enlargement of the applicant on bail viz. the applicant is the only bread winner in the family and has old aged parents and a younger brother who is pursuing his studies as his only dependent family members.

Learned counsel for the applicant invited our attention to the copies of the oral testimonies of the witnesses before the Court and vehemently submitted that the so-called star witnesses of the prosecution are unable to support the case of the prosecution. Learned counsel also submitted before this Court that assuming, though not admitted, the death of the victim was homicidal one, the evidence in the form of inquest panchanama and spot panchanama is not supporting the case of the prosecution and there are serious and material discrepancies. It is then

submitted by the learned counsel for the applicant that the applicant was arrested on 5th May, 2016 and for the entire period of trial i.e. till the date of recording order of conviction and sentence, the applicant was behind bars. Learned counsel for the applicant then submitted that the applicant/appellant filed his appeal in the year 2019 and considering the large number of old appeals pending before this Court, it will take considerable time for hearing of the appeal of the present applicant/appellant.

It is also submitted by learned counsel for the applicant that considering the very weak nature of the evidence, the applicant/appellant is having every hope of success in the appeal and as such, keeping the applicant behind bars for further indefinite period would cause injustice to him. In support of his submissions, learned counsel for the applicant, invited our attention to the testimonies of witnesses viz. PW 1 – pancha witness, PW-5, PW-8 and PW-9.

Learned APP vehemently opposed the application.

4. We have gone through the material placed on record, more particularly, versions of PW-1, PW-5, PW-8 and PW-9. On perusal of the version of these witnesses and, more particularly, their cross-examination, we find considerable merit in the submission of the learned counsel for the applicant that the entire case of the prosecution rests on

circumstances and there are certain material discrepancies in the version of the witnesses. There is also merit in the submission of the learned counsel for the applicant that it would take sufficient period of time in hearing the appeal and that the applicant is behind bars for a period of nearly 5 years. We are of the opinion that the learned counsel for the applicant made out a good case for allowing the application. Hence, the applicant be released on bail during the pendency of the present appeal on the following conditions:-

- I. The applicant be released on bail of Rs.25,000/- with two solvent sureties in the like amount.
- II. The applicant shall undertake that he shall continue to reside at the address, to be communicated by him during the pendency of the present proceeding and he shall not leave that address.
- III. The applicant shall not contact either complainant or any of the witnesses or their family members and shall not indulge in any unlawful activities or business.
- IV. The applicant shall report to Wavi Police Station at Sinnar on every 15th day of the month and maintain a diary of his attendance duly countersigned by the In-charge officer of the police station or senior police inspector of Wavi Police Station, whatever the case may be.

V. Failure to comply with these terms and conditions or to obey the same shall constitute breach of this order and the Trial Court shall, in the event, proceed to take him in custody in accordance with law.

5. The criminal application is, accordingly, allowed and disposed of.

6. All concerned will act on production by fax or email of a digitally signed copy of this order.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)