

VISHWANATH
SATYANARAYANA
SHERLA

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

Digitally signed by
VISHWANATH
SATYANARAYANA
SHERLA

Date: 2021.10.21
19:15:27 +0530

**CRIMINAL INTERIM APPLICATION NO.2000 OF 2021
IN
CRIMINAL APPEAL NO.322 OF 2021**

Hanmant Ananda Kamble

... Applicant

Vs.

State of Maharashtra

... Respondent

Ms.Pravada Raut i/b Mr.Hrishikesh Mundargi for the
Applicant/Appellant

Mr.V.B. Konde-Deshmukh, APP, for Respondent – State

**CORAM: S.S. SHINDE &
SANDIPKUMAR C. MORE, JJ.**

DATED: OCTOBER 21, 2021

P.C.:

1. The present applicant has been convicted for life by the learned Sessions Judge, Sangli in Sessions Case No.64 of 2016 vide his judgement and order dated 25th January, 2021.

2. This application is filed with a prayer to suspend the impugned judgement and sentence and enlarge the applicant on bail during the pendency of the present Criminal Appeal No.322 of 2021, which has been admitted by this Court and awaiting final adjudication.

3. The learned Counsel appearing for the applicant/appellant invites the attention of this Court to the evidence of PW4 – Nitin More, PW8 – Dhananjay Chavan, PW9 – Omkar Jadhav and PW12 – Dr.Rachel Noronha and submits that one of the incriminating circumstances relied upon by the trial Court that the appellant was last seen in the company of the deceased, is contrary to the evidence of PW4, PW8 and PW9. It is submitted that the appellant was apprehended after three days of the incident and the alleged memorandum of statement was recorded thereafter. It is submitted that the appellant was not seen in the company of the deceased and when the prosecution has not brought on record either circumstantial or direct evidence that the appellant alongwith the other co-accused had hatched criminal conspiracy to kill the deceased, namely, Sajan Ramesh Sarode, the finding recorded by the trial Court of conviction of the appellant cannot legally be sustained. It is submitted that the appellant was enlarged on bail during the pendency of the trial and, therefore, the appellant deserves to be enlarged on bail during the pendency of the present appeal, thereby suspending the sentence awarded by the trial Court.

4. On the other hand, Mr.V.B. Konde-Deshmukh, learned APP appearing for the State, invites our attention to the finding recorded by the trial Court and submits that the trial Court has rightly placed reliance on the evidence of PW4, PW8 and PW9 and reached to the conclusion that the deceased, namely, Sajan Ramesh Sarode, was last seen in the company of the accused within the proximate time and date of the incident and, therefore, the trial Court was justified in relying upon the evidence of the said witnesses so as to hold that the deceased was seen in the company of the accused and thereafter he was never seen. It is submitted that at the instance of the appellant, the clothes of the accused were recovered and those were found blood stained. It is submitted that the recovery of the clothes of the accused at the instance of the appellant was a vital circumstance and when the opportunity was given to the appellant to explain the said incriminating circumstance under section 313 of the Code of Criminal Procedure, the appellant simply denied and has not explained how the blood stains were found on the clothes of the appellant. Therefore, the learned APP submits that the application deserves no consideration.

5. We have given due consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the appellant and the learned APP appearing for the State, we have seen the evidence of the prosecution witnesses so also medical evidence and the findings recorded by the trial Court. The trial Court while convicting the appellant with some of the co-accused, has placed reliance upon the evidence of PW4 – Nitin More, PW8 – Dhananjay Chavan, PW9 – Omkar Jadhav while recording the finding that the appellant was last seen in the company of the appellant and the other co-accused. We have carefully perused the evidence of PW4, PW8 and PW9 and prima facie, find that the finding recorded by the trial Court that the deceased was last seen in the company of the appellant alongwith the other co-accused is not in consonance with the evidence of PW4, PW8 and PW9. We find that PW9 turned hostile and he was cross-examined by the learned Prosecutor appearing for the State before the trial Court. Therefore, the finding recorded by the trial Court that the deceased was last seen in the company of the appellant-accused within the proximate date and time of the death of the deceased does not prima facie appear to be in consonance with the evidence of PW4, PW8 and PW9.

6. Insofar as the other piece of evidence that the clothes of the accused including the present appellant were recovered and human blood stains found on the said clothes is concerned, at the highest, this significant piece of evidence can be used for the purpose of corroboration. When the appellant was enlarged on bail during the pendency of the trial, keeping the appellant behind bars, would be too harsh.

7. In that view of the matter, we are of the opinion that the appellant, who was hardly 20 years of age at the relevant time, deserves to be enlarged on bail during the pendency of the present Appeal. Hence, the following order:

- i) The substantive sentence awarded to the appellant stands suspended till the disposal of the appeal.
- ii) The appellant be enlarged on bail on the same conditions as imposed by the trial Court, which are as under:

“The appellant, namely, Hanmant Ananda Kamble, be released on bail on his executing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or more solvent sureties in like amount on conditions that -

(a) He shall attend Kupwad MIDC Police Station, on every Monday and Friday between 1pm and 4pm till further orders.

(b) He shall not tamper with prosecution evidence and witnesses in any manner.

(c) He shall furnish cell phone numbers and postal address of himself and his two nearest relatives to the Investigating Officer and to the Court with bail papers.

(d) He shall not leave India without previous permission of the Court.

(e) He shall not indulge in any criminal activity or commission of any crime after being released on bail.

(f) On violation of any of the aforesaid conditions, prosecution would be at liberty to move for cancellation of the bail.”

(ii) The appellant shall furnish fresh bonds to the satisfaction of the learned trial Judge.

8. The Application is allowed to the above extent and stands disposed of accordingly.

9. All concerned to act on an authenticated copy of this order.

(SANDIPKUMAR C. MORE, J.)

(S.S. SHINDE, J.)