

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

**CRIMINAL APPLICATION NO. 1212 OF 2022
IN
CRIMINAL APPEAL NO. 32 OF 2019**

Suresh s/o Jaidrath Maske

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. V. R. Dhorde, Advocate for the applicant
Mr. R. V. Dasalkar, APP for respondent/State
.....

CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.
DATE : SEPTEMBER 27, 2022

ORDER [PER RAJESH S. PATIL, J.] : -

1. This is a successive application preferred by the applicant seeking suspension of substantive sentence and bail. The applicant-accused came to be convicted and sentenced in Sessions Case No. 40/2016 for offences punishable under Sections 302, 307 and 498A of the Indian Penal Code by learned Additional Sessions Judge, Majalgaon. Charge of murder of son of the applicant, aged about 7 years and charge of attempt on the life of the wife is proved against the applicant.

2. The earlier application filed by the applicant for suspension of substantive sentence and bail came to be rejected by this Court [Coram : T. V. Nalawade & K. K. Sonawane, JJ.] vide order dated 01st August, 2019. While rejecting the said application, the
sgp

Court had made following observations :

“At present there is no presumption of innocence in favour of the accused. Specific evidence is given by the wife that the appellant had suspicion about her character and out of that suspicion, he was giving ill-treatment not only to her but he was giving bad treatment to Yash and used to beat him. The appellant was addicted to liquor as per the version of the wife. In view of these circumstances this Court holds that it is not possible to suspend the substantive sentence and grant bail.”

3. Heard learned counsel for the applicant and APP for respondent/State. Perused the application.

4. Though, there is no doubt that the subsequent bail/suspension application is maintainable, there must be some material change in the facts and circumstances or the law. The parameters to be observed by High Court while dealing with the successive application for suspension of sentence and grant of bail have been considered by the Apex Court in **Kalyan Chandra Sarkar vs. Rajesh Ranjan** reported in (2005) 2 SCC 42, wherein it is held :

"19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are

binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application.”

5. In the case at hand, the learned counsel for the applicant could not point out any change in circumstances. Therefore, in view of the aforesaid, it is not open to the aggrieved person to file successive application for suspension of sentence on the same grounds on which the earlier application has been rejected by the Court. Granting bail by reconsidering the same grounds and by substituting its subjective satisfaction practically overrules findings of the Court recorded in the earlier order and obviously this is not permissible. Hence the instant successive application cannot be considered on the same grounds which were agitated earlier. The application *sans* merit and same stands rejected.

6. At this stage, learned Counsel for the applicant orally requests for expediting the hearing of the present appeal.

7. Lapse of two years after rejection of earlier application and appeal not taken for final hearing during this period will not be a change in circumstance. Due to the heavy pendency of cases, this Court is unable to take up the matters of recent years. This Court is hearing jail appeals of year 2015. No case is made out for taking appeal of this appellant out of turn or allow him to brake the queue.

8. Oral request made by learned counsel for the applicant is turned down since we are now taking up final hearing appeals of the year 2015, hence, no preference can be given to the hearing of the present appeal which is of the year 2019.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE