

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

**24 CRIMINAL APPLICATION NO.2585 OF 2021
IN APEAL/367/2012 WITH REVN/80/2012 WITH APEAL/367/2012**

**SADAT AHMED KHAN WAHED KHAN DECEASED THROUGH L.R.s KHAN
MINHAJ AHAMAD SADAT AHAMAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Ms.Rekha Choudhari h/f. Mr. S.S. Choudhari, Advocate for the appellants.
Mr.Y.G. Gujarati, APP for the respondent/State.
Mr.PR. Katneshwarkar, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 19.12.2022**

PC :-

01. Heard learned Advocate for the applicants. This is an application for bringing on record the legal representatives of deceased appellant who died during pendency of the appeal. The application is vehemently opposed by respondent No.2 stating that under section 394 of Cr.P.C., heirs can be brought on record only in two contingencies; first in a case where appeal of sentence of fine and secondly where the appeal is against conviction and sentence of death or of imprisonment. Learned Advocate for respondent No.2 submits that in this case Criminal appeal No.367 of 2012 is for enhancement and does not fall under any of the categories as contemplated under section 394 of Cr.P.C. He submits that wording of the section is very clear and prays for rejection of application. His further submission is that this appeal for enhancement is not maintainable. However, since appeal is already admitted, this question can be gone into only at the stage of final hearing.

02. So far as considering the application for bringing legal representatives of the appellant on record, same is allowed subject to the objection of respondent No.2 to be heard at the stage of final hearing of the appeal.

03. The application is thus allowed. The applicants to carry out amendment within one week from today.

04. Appeal be listed for hearing in due course.

[KISHORE C. SANT, J.]