

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

**CRIMINAL APPLICATION NO.4064 OF 2022
IN APEAL/943/2022 WITH APEAL/282/2022 WITH
APEAL/559/2022 WITH APEAL/943/2022**

**NATHSAGAR @ TUKA RAMNATH JADHAV
VERSUS
THE STATE OF MAHARASHTRA**

Mr. G. A. Kulkarni, Advocate for the applicant (appointed)
Mr. S. P. Sonpawale, APP for the respondent/State

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.
DATED : 19th DECEMBER, 2022**

PER COURT :-

1. By this application, convict-applicant is seeking suspension of substantive sentence awarded to him by judgment and order dated 5th March, 2022 passed by learned Additional Sessions Judge, Ambad, Dist. Jalna, in Sessions Case No. 63/2021.

2. Learned advocates for the applicant submitted that co-convicts are already released on bail and he deserves parity. According to him the evidence on record is not sufficient to connect the applicant with the crime in question and that the learned trial Court has convicted him without considering the

fact that the alleged incriminating recoveries from the accused are not duly proved as the panch witness to the recovery has not supported the prosecution. It is submitted that considering the nature of evidence, the applicant has good case on merit for seeking acquittal and hence, substantive sentence awarded to him be suspended.

3. Learned APP opposed the present application. According to him applicant is prime accused and considering his role no party can be sought. It is submitted that there is evidence on record to show that for the purpose of ransom demanded by applicant, deceased has been killed. According to him, there is evidence in the form of incriminating recovery of cloths as well as iron rod and considering previous demand of ransom by applicant, it is not a fit case for suspension of sentence.

4. *Prima facie* consideration of material on record shows that the case is based on circumstantial evidence and as convicts are is claimed to have been last seen in the company of deceased. Though informant claims that prior to the incident

applicant herein and others demanded ransom of Rs.10,00,000/- from deceased Govind however, no evidence is brought on record to indicate lodging of any complaint etc. Moreover, inspite of said fact being within knowledge neither in missing report nor in First Information Report, any suspicion is raised against applicant. Statement of Santosh, who has claimed to have seen two accused persons with deceased prior to occurrence of the incident, is recorded by police on 2nd September, 2017. This witness who is friend of father of deceased and hence he not informing about having seen deceased in the company of accused immediately is not acceptable. As far as recoveries are concerned, the independent panch witness has not supported prosecution and his testimony is apparently not worthy of credit. Since police had already been to the spot where dead body was found and hence recovery of the rod later in point of time from the same place becomes doubtful and cannot be considered incriminating against applicant. Considering these aspects of the case, there is reason to believe that applicant may have good case on merit. There is no likelihood of present appeal to be taken up for hearing in short period of time and in the circumstances, applicant deserves to be enlarged on bail by

suspending substantive sentence. Hence the following order :-

ORDER

- i) Criminal Application is allowed.
- ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicant be released on bail on him executing of P.R. Bond in the sum of Rs. 15,000/- each (Rs. Fifteen Thousand only) with one surety in the like amount.
- iii) Applicant shall not enter Taluka Ambad, District Jalna, till decision of the appeal.
- iv) Fees of the appointed counsel is quantified Rs. 10,000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.
- v) Bail before the trial Court.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

ssp