

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

***INTERIM APPLICATION NO.612 OF 2022
IN
CRIMINAL APPEAL NO.176 OF 2022***

Mohd. Sharif Shaukat Ali Shaikh Applicant
Vs.
The State of Maharashtra Respondent

Mr. K. M. Sangani for the Applicant.
Mrs. P. P. Shinde, APP for Respondent.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 25th JULY 2022.

P. C.

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant vide Judgment and Order dated 27/10/2021, passed by learned Additional Sessions Judge, Mumbai in Sessions Case No. 88 of 2018 has been convicted for the offences punishable under section 302 r/w.34 and for the offence

punishable u/s.394 r/w.34 of the IPC. For the offence under section 302 r/w 34 the applicant was sentenced alongwith other co-accused to suffer imprisonment for life and to pay fine and for the offence punishable under section 394 r/w. 34 of the IPC to also suffer imprisonment for life and to pay fine. Both the sentences imposed on the applicant were to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the applicant and the learned APP for the State. The prosecution case rests entirely on circumstantial evidence i. e. on extra judicial confession, last seen and recovery of ornaments. As far as the circumstance of extra judicial confession is concerned, the prosecution in support of the same, has examined two witnesses i.e. PW-5-Shan Mohd. Jan Mohd. Hashmi and PW-12-Gulnaz Bano Shan Mohd. Hashmi. Both the said witnesses have resiled from their statements and hence, were declared hostile. As far as the circumstance of last seen is concerned, the prosecution in support thereof, examined two witnesses i.e. PW-9-Sahil Sattar Shaikh and PW-10 Ranno Shivshankar Agrahari. As far as PW-9-Sahil is concerned, a perusal of his examination-in-chief does not show that

the applicant was last seen in the company of Ajay Jaiswal (deceased). As far as PW-10-Ranno is concerned, the said witness has turned hostile. The other evidence is recovery of ornaments at the instance of the applicant, which by itself is a weak circumstance. It is not disputed that the applicant was on bail pending trial.

6. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details,

if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of the applicants bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.