

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

**INTERIM APPLICATION NO. 1870 OF 2022
IN
CRIMINAL APPEAL NO. 140 OF 2018**

Jotiba @ Jotiram Arvind Kalagate ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

Mr. Subir Sarkar, Appointed for the Applicant.

Mr. A.R.Kapadnis, APP for the Respondent -State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 29th June, 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 his aforesaid appeal.

3. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that some of the co-accused have already been

enlarged on bail and their sentences have been suspended by this Court. He submits that the role of the applicant is similar to the co-accused, whose sentences were suspended and were enlarged on bail. He further submits that the only circumstance qua the applicant is recovery of blood stained weapons i.e. two *koytas*, however, the CA report shows that the blood group found on the same was inconclusive. Learned Counsel submits that apart from the same, there is absolutely no material to connect the applicant with the alleged offence.

4. Learned APP does not dispute the fact, that the only circumstance as against the applicant is recovery of blood stained weapons i.e. *koytas*. He also does not dispute that the CA report with respect to the blood group found on the said weapons is, inconclusive.

5. Perused the papers. Admittedly, the prosecution case rests on circumstantial and direct evidence. As far as eye witnesses are concerned, both the eye witnesses i.e. PW-9 -Avinash Arun Shinde and PW-13- Shobha Mahadev Chande have turned hostile and as

such, have not supported the prosecution case. As far as circumstantial evidence is concerned, there is alleged recovery of blood stained weapons i.e. two *koytas* at the instance of the applicant. The CA report shows that the blood group found on the said weapons is inconclusive. The same is also not disputed by learned APP. This being the only circumstance qua the applicant, the applicant is entitled for suspension of his sentence and enlargement on bail. Accordingly, we allow the application and suspend the sentence of the applicant and enlarge the applicant 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.20,000/- 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 bail.

6. The application is accordingly disposed of.
7. All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.