

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

***INTERIM APPLICATION NO. 2269 OF 2022
IN
CRIMINAL APPEAL NO. 143 OF 2018***

Lala @ Lalya Sharuddin Malik
Age : 30 years, Having address at
Old Chandur Road, Prit Mala, Ichalkaranji,
Tal. Hatkangangale,
(Presently undergoing sentence
at Kalamba Central Jail, Kolhapur) ... Appellant

Versus

The State of Maharashtra ... Respondent

...
Ms. Devyani Kulkarni, Advocate (Appointed) for the applicant.
Mr. A.R. Kapadnis, A.P.P. for the Respondent-State.
...

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

DATE : AUGUST 23, 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. She submits that identically placed co-accused - Jotiram @ Jotiba Arvind Kalagate's sentence has been suspended and he is enlarged on bail. She further submits that there is recovery of two *Koytas* at the instance of the said co-accused - Jotiram @ Jotiba Arvind Kalagate, like the applicant i.e. Lala @ Lalya Sharuddin Malik, against whom there is recovery of one *Koyta* and muddy clothes. She submits that apart from the said evidence, there is no other material to connect the applicant with the alleged offence. She further submits that the Chemical Analyser's (CA) Report, with respect to the blood group found on the said weapon is, inconclusive.

4. Learned APP does not dispute the fact, that the only evidence *qua* of the applicant is that of recovery of a *Koyta* and muddy clothes.

5. We have perused the papers with the assistance of the learned Counsel for the parties.

6. Admittedly, the prosecution case rests on circumstantial as well as direct evidence. As far as eye witnesses are concerned, both the eye witnesses i.e. PW-9-Avinash Arun Shinde and PW-3-Shobha Mahadev Chande have turned hostile, and, as such, not supported the prosecution case. The only evidence *qua* the applicant is recovery of a bloodstained *Koyta* and muddy clothes at his instance. Admittedly, the blood group found on the said weapon is inconclusive, as evident from the CA Report. Thus, the evidence *qua* the applicant is identical to that of co-accused - Jotiram @ Jotiba Arvind Kalagate, whose sentence has been suspended and who was enlarged on bail vide order dated 29th June, 2022.

7. Considering what is stated aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, on the following terms and conditions. Accordingly, we pass the following order :

ORDER

- (i) The Interim Application is allowed;

- (ii) The applicant be enlarged on bail on furnishing PR Bond in the sum of Rs.20,000/- (Twenty Thousand Only) with one or two sureties in the like amount;
 - (iii) 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;
 - (iv) 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;
 - (v) 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.
8. The application is accordingly disposed of in the aforesaid terms.
9. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.