

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

***CRIMINAL INTERIM APPLICATION NO. 2357 OF 2022
(For Suspension of Sentence and Bail)
IN
CRIMINAL APPEAL NO. 256 OF 2018***

Manoj Jairam Sonavane ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Raju Digamber Suryawanshi for the Applicant

Ms. M. H. Mhatre, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE &
SARANG V. KOTWAL, JJ.
THURSDAY, 22nd SEPTEMBER 2022***

P.C. :

1 This Bench has been specially constituted to hear the
aforesaid application, pursuant to the Administrative Order
passed by the Hon'ble the Chief Justice on 13th September 2022.

2 Heard learned counsel for the applicant and the
learned A.P.P for the respondent-State.

3 This is the second application filed by the same applicant for suspension of his sentence and release on bail during pendency and final disposal of Criminal Appeal No. 256/2018. The appeal is filed by the applicant/appellant along with four others. The applicant was the original accused No. 4 in Sessions Case No. 135/2015 before the Additional Sessions Judge-5, Thane. At the conclusion of the trial, he was convicted for the offence punishable under Section 302 r/w 149 of the Indian Penal Code (`IPC'), apart from other lesser offences. He was sentenced to suffer rigorous imprisonment for life for offence under Section 302 r/w 149 of the IPC.

4 The applicant had earlier approached this Court for his release on bail during the pendency of trial along with other accused by filing Criminal Application No. 424/2018. That application was disposed of as withdrawn vide order dated 28th June 2018, however, specific liberty was granted to the applicant

to apply afresh in the event, appeal was not heard for a period of one year from that date i.e. from 28th June 2018. Till today, the appeal is not heard. The period of one year is over. Considering the liberty granted to the applicant, we have heard the parties afresh.

5 Learned counsel for the applicant submitted that the applicant is not named in the deposition of the sole eye-witness, PW 1-Jayant Bhoir. The only evidence against him was his identification in the test identification parade and recovery of clothes. The Chemical Analyser's report in respect of those clothes is not an incriminating circumstance. The identification parade cannot be believed, when there is a delay in holding the test identification parade.

6 Learned A.P.P. opposed this application. She emphasized the fact that earlier this application was withdrawn after arguments. She relied on the deposition of PW 1.

7 We have considered the submissions. The incident is dated 27th July 2014 regarding assault on the deceased-Sanjay Rokde. The applicant was arrested on 27th July 2014 and the test identification parade was held on 15th September 2014. No explanation is offered for not holding test identification parade belatedly. Though the applicant is identified in the Court, the infirmity in the test identification parade, coupled with the delay, will have to be considered during final hearing of the appeal. Recovery of clothes at the instance of the appellant does not appear to be an incriminating circumstance. The applicant is already in jail for about 7 years. The appeal is not likely to be decided in the near future. Therefore, we are inclined to grant bail to the applicant. Hence, the following order :

ORDER

- (i) During pendency and final disposal of Criminal Appeal No. 256/2018, the applicant's sentence is suspended and he is directed to be released on bail, on his executing

PR Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

8 The application is disposed of accordingly.

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

SARANG V. KOTWAL, J.

REVATI MOHITE DERE, J.