

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

**INTERIM APPLICATION NO. 3090 OF 2021
IN
CRIMINAL APPEAL NO. 811 OF 2017**

Madhukar Raghunath Bhoir

...Applicant

VS.

The State of Maharashtra

...Respondent

Mr. Ashish Pawar i/by Mr. Aashish Satpute - Advocate for the
Applicant

Mr. J. P. Yagnik - APP for the Respondent-State

**CORAM : REVATI MOHITE DERE &
 S. M. MODAK, JJ.**

DATE : 10th OCTOBER, 2022

P. C. :-

1. Heard learned counsel for the parties.

2. By Interim Application No. 3090 of 2021, the
Applicant – Madhukar Bhoir seeks suspension of his
sentence and enlargement on bail, pending the hearing and
final disposal of his aforesaid Appeal, being Criminal Appeal
No. 811 of 2017.

3. Learned counsel for the Applicant seeks suspension of the Applicant's sentence and his enlargement on bail, pending his Appeal, on the ground of parity. He submits that the Applicant stands on a far better footing than the co-accused - Bhalchandra Bhoir, who was enlarged on bail by the Apex Court, vide Order dated 13/02/2020. Learned counsel relied on the Order passed by the Apex Court in Special Leave to Appeal (Crl.) No. 11133 of 2019 filed by the co-accused- Bhalchandra Bhoir, which is at Exh. 'C' at page no. 246 of the application.

4. Mr. Yagnik, learned APP does not dispute the fact, that the role of the co-accused - Bhalchandra Bhoir was more serious than the role of the present Applicant. The Applicant is in custody since 10/05/2009 i.e. for more than 10 years. The learned counsel for the Applicant states that the Applicant has no antecedents. Statement accepted.

5. Perused the papers. The Applicant, alongwith other co-accused vide judgment and Order dated

25/07/2017, passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No. 62 of 2010, has been convicted for various offences. The maximum sentence imposed for the offence punishable under Section 302 r/w Section 149 of the Indian Penal Code is life imprisonment.

6. Post the Applicant's conviction and sentence, the Applicant preferred the aforesaid Appeal i.e. Criminal Appeal No. 811 of 2017. This Court vide Order dated 03/11/2017 was pleased to admit the said appeal. It also appears that the Applicant had initially filed an application seeking suspension of his sentence and enlargement on bail, before this Court, however, the same was withdrawn, as the Court was not inclined to grant the relief as sought by the applicant. The said order dated 20/01/2020, passed by this Court (Coram :- Ranjit More and Surendra P. Tavade, JJ.) is at Exh. 'E' at page no. 259 of the application.

7. The present application is the 2nd application, filed in view of the change of circumstance, i.e. the release

of the co-accused - Bhalchandra Bhoir by the Apex Court vide Order dated 13/02/2020. Since, the Hon'ble Judges, who passed the earlier order, have since retired, we have heard the learned counsel for the respective parties. The co-accused - Bhalchandra Bhoir is alleged to have fired a bullet from his revolver on the deceased. The order enlarging the co-accused - Bhalchandra Bhoir on bail is at Exh. 'C', at page no. 246. The Apex Court whilst releasing to Co-accused - Bhalchandra Bhoir has observed that the said accused is in custody for more than 10 years. Today, the Applicant - Madhukar Bhoir seeks bail on the ground of parity, on the ground of delay in hearing the aforesaid appeal and on the ground that the Applicant has also undergone more than 10 years in custody. Learned counsel for the Applicant states that even today the matter is shown under caption of 'un-ready appeal'.

8. It is the prosecution case, that the present Applicant alongwith co-accused Ganesh and Mahendra held the deceased (Samir) and also abused him, at which time

co-accused – Bhalchandra Bhoir told the deceased (Samir) that ‘he will not keep him alive’ since he had started construction of a wall, despite warning him not to start any construction on the open plot. Thereafter, the said co-accused – Bhalchandra Bhoir fired from his revolver at the deceased, pursuant to which he succumbed to the same. The Apex Court having regard to the fact that co-accused – Bhalchandra Bhoir was in custody for about 10 years, enlarged him on bail.

9. Learned APP does not dispute the fact, that the role of the Applicant stands on a better footing than the co-accused – Bhalchandra Bhoir and that the Applicant has also been in custody for more than 10 years.

10. Considering the aforesaid, Interim application No. 3090 of 2021 is allowed and the Applicant’s sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal No. 811 of 2017, on the following terms and conditions:

ORDER

(I) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- 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 the Appeal is finally disposed of;

(iii) The Applicant shall keep the trial Court informed of the current address and mobile contact number and/or change of residence of 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.

11. The Interim Application No. 3090 of 2021 is allowed in the aforesaid terms and is accordingly disposed of.

12. All concerned to act on the authenticated copy of this Order.

[S. M. MODAK, J.]

[REVATI MOHITE DERE, J.]