



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3676 OF 2023
IN
CRIMINAL APPEAL NO. 344 OF 2019

Sachin s/o Vitthal Suryawanshi
Age 42 yrs., Occ. Agri.,
r/o Kerul, Taluka Ashti,
District Beed.

... Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Ashti, Police Station, Beed,
Taluka Ashti, District Beed.
2. Pushpa wd/o Balu @ Ravindra Khakal
Age 40 yrs., Occ. Household,
R/o. Khakalwadi, Taluka Ashti,
District Beed.

... Respondents

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Mr. Rajendra G. Hange, Advocate for the Applicant.
Mr. S. D. Ghayal, APP for Respondent No.1-State.
Mr. S. J. Salunke, Advocate for Respondent No.2.
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 18.12.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. By invoking Section 389 of the Code of Criminal Procedure [Cr.P.C.], prayers are raised for suspension of sentence and grant of bail during pendency of appeal bearing Criminal Appeal No. 344 of 2019.

2. Learned counsel for the applicant/appellant pointed out that appeal arises out of the judgment and order of conviction passed on 19.03.2019. He would further submit that the applicant is lodged in prison since 15.10.2011 i.e. since more than 12 years and according to him, in view of judgment of the Hon'ble Apex Court in ***Sonadhar v. The State of Chhattisgarh ; 2022 LiveLaw (SC) 788***, present applicant is entitled to be enlarged on bail, he having completed more than 10 years incarceration. That, whenever he was given benefit of parole, he has reported back in time and there is no breach at any point of time. His liberty whenever granted, was never misused. However, as now he is behind bars for more than 10 years, he be set at liberty on appropriate conditions.

3. Above application is strongly opposed by learned APP as well as learned counsel for respondent no.2 by pointing out that applicant has misused the liberty and has not reported back to the prison and therefore, he has been charged for commission of offence punishable under Section 224 of the Indian Penal Code [IPC]. That, if he is set at liberty now, again he is likely to misuse the liberty and may not make himself available. Hence, application is sought to be rejected.

4. Heard learned counsel for respective sides.

5. After considering the submissions of respective sides, there is no dispute that applicant, a convict, is in prison since 15.10.2011. Learned counsel is seeking reliance on the judgment of the Hon'ble Apex Court in ***Sonadhar v. The State of Chhattisgarh*** (supra). On going through the same, it is seen that the Hon'ble Apex Court in above case has held, as regards to post conviction bail, that all persons who have completed 10 years of sentence and when appeal is not in proximity of hearing, with no extenuating circumstances should be enlarged on bail. Therefore, there is a clear rider that only when it is shown that there are no prospects of appeal being taken up for hearing, and there is further rider that there should not be any extenuating circumstances, in only such circumstances, prisoner is entitled to be enlarged on bail.

6. Hear, appellant is charged with offence punishable under Sections 147, 148, 302 r/w 149 of IPC. Learned APP has brought to our notice that the applicant has misused the liberty and was consequently required to be booked for commission of offence punishable under Section 224 of IPC. Such crucial aspect itself

disentitles relief as he is shown to have a propensity to misuse the liberty. Precisely for above reasons, we refuse the relief prayed. The application is rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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