

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3862 OF 2022

TUKARAM S/O KISANRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. N. S. Ghanekar, Advocate for applicant.
Mrs. V. S. Choudhary, APP for respondent - State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : March 10, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application appears to be the second application by the applicant for suspension of sentence. His earlier application i.e. Criminal Application No.2117 of 2022 came to be rejected by this Court on 14.07.2022.

2. Heard learned Advocate Mr. N. S. Ghanekar for the applicant and learned APP Mrs. V. S. Choudhary for the respondent - State.

3. It has been vehemently submitted on behalf of the applicant that the substantive sentence imposed on co-accused Sheshabai Kisanrao Shinde was suspended by this Court by order dated

03.01.2022. Co-accused Sheshabai was 79 years old lady. By order dated 25.06.2021, this Court had allowed her to withdraw the application on the ground that taking into consideration the age of the appellant, who is having health issues, this Court was inclined to take up the appeal itself and, therefore, that application was withdrawn, but then on 03.01.2022, when it was noted that it is not possible to finish of the appeal, the lady was released on bail by suspending the sentence. Though this Court by order dated 14.07.2022 had rejected the similar application, yet a fact is required to be considered that there is nobody to look after accused No.2. i.e. the lady who has been released on bail by this Court by order dated 03.01.2022. Secondly, it will not be possible for this Court to take up the matter immediately taking into consideration the huge pendency. Therefore, till the disposal of the criminal appeal, the appellant deserves to be released on bail.

4. Here, we would like to say that by rejecting his earlier bail application on 14.07.2022, this Court had taken into consideration the evidence and opinion was formed that there is sufficient material against the present applicant. Under such circumstance, though at that time it was a coordinate Bench; that decision is binding on this Court and a different view cannot be taken than it was taken by this Court earlier. No doubt, there is huge pendency of the cases, but this

Court is trying to give preferences to those appeals which have been filed by the convicts and those convicts are still in jail. Co-accused was released taking into consideration her age. Present appellant cannot take advantage of the said fact. It has not been brought on record how there is no other person available to look after the old lady. When this Court has already arrived at a conclusion that there is *prima facie* evidence against the appellant, it cannot be said that there is room to grant bail to the applicant. The application stands rejected.

[Y. G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm