

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

**INTERIM APPLICATION NO.438 OF 2023
IN
CRI. APPEAL NO.1181 OF 2022**

Uma Sanjay Jadhavar ... Applicant.
Versus
The State of Maharashtra ... Respondent.

.....
Mr. Yug Mohit Chaudhary, Advocate for the Applicant.
Mr. A.R.Kapadnis, for the Respondent-State.

.....
**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 21 FEBRUARY 2023.

P.C. :-

1. Heard.

2. In Sessions Case No.120 of 2013, the Applicant/Accused No.3 along with Accused No.1 Sanjay Jadhavar and her husband, came to be convicted for offences punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to undergo life imprisonment.

3. Accused No. 2 Rohit Tanaji Mali, friend of Accused No.1 is acquitted.

4. While trying to make out a case under Section 389(1) Cr.P.C., Mr.Yug Choudhary, learned Counsel for the Applicant, would urge that conviction is based on the testimony of sole eyewitness PW 5-Ashwini Ragh, friend of Applicant. He would urge that the incident had occurred on 5.3.2013 before which, the Applicant had, with the assistance of PW 5-Ashwinin, alleged to have made a phone call to the deceased-Sakharam and called him in the night. He would further urge that PW 5 allegedly accompanied Accused No.3 on the pretext Accused No.3 going for answering nature's call, during which time, offence had taken place. According to him, the Applicant has undergone almost 10 years of actual imprisonment. But for the role of once holding deceased Sakharam, no aggressive overt act is attributed to the Applicant. Apart from that, there is no corroboration to the theory of the prosecution that the phone call by the Applicant to the deceased, as the said phone call was not subjected to investigation by collecting CDR. Learned Counsel would urge that the very presence of PW 5 on the spot of incident is under doubt as statement of PW 5 u/s 161 Cr.P.C. was recorded almost after 9 days and she has claimed to have not divulged the incident of Accused murdering the deceased, to her husband.

5. While opposing the prayer, learned APP would urge that testimony of PW 5 supports the case of the prosecution as she has in categorically terms named the Applicant in active role in commission of the crime.

6. Having considered rival submissions, what can be noticed is, Applicant has already suffered incarceration for 10 years. If we appreciate the testimony of PW 5-Ashwini, the fact that her statement was recorded after delayed period of 9 days and she having not divulged the incident to the Accused murdering the deceased, sufficiently raises doubt of testimony of the said witness.

7. In view of above, the Applicant has made out a case for grant of bail. Hence, the order.

:ORDER:

- i) Applicant be released on bail, in Crime No. 24 of 2013, registered with Sangli Rural Police Station, upon furnishing P.R. Bond in the sum of Rs.15,000/- with one or more sureties in the like amount.
- ii) Till the hearing of appeal, the Applicant shall not enter the jurisdiction of the concerned police station.

- iii) Applicant shall not issue threats to the witnesses.
- iv) Application stands allowed in above terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]