

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 823 OF 2023
IN
CRIMINAL APPEAL NO. 359 OF 2017

1. Sombahaddur Budhhibahadur Tamang
2. **Sanu Garbhu Tamang @ Lama** ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Nitin Gaware Patil a/w Mr. Anandmaya Dhorde i/b Mr.
A.D.Nagode, for the Applicants.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 21st DECEMBER, 2023

ORAL ORDER (PER : REVATI MOHITE DERE, J.) :

1. Heard learned Counsel for the parties.
2. By this application, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final

disposal of their aforesaid appeal.

3. The applicants, vide Judgment and Order dated 18th February, 2017, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 666 of 2011, have been convicted as under:-

- for the offences punishable under Sections 302 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each, in default, to suffer further rigorous imprisonment for two years;
- for the offences punishable under Sections 449 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each, in default, to suffer further rigorous imprisonment for two years;
- for the offences punishable under Sections 392 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/- each, in default, to suffer further rigorous imprisonment for two years;

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests entirely on circumstantial evidence i.e. the evidence of last seen by the daughter of the owner of the house and the watchman of the building and recovery of gold ornaments / cash. Learned Counsel for the applicants submits that the applicants are in custody for about 12 ½ years and as such, place reliance on the judgment of the Apex Court in the case of *Saudan Singh V/s. The State of Uttar Pradesh*¹.

5. Learned Counsel for the applicants submits that there are several discrepancies as far as recovery of gold ornaments at the instance of the applicants are concerned, and as such, the said evidence of recovery appears to be suspicious. There are only two circumstances relied upon by the prosecution i.e. of last seen and recovery of gold ornaments. As far as long incarceration is concerned, it is not in dispute that the applicants are in custody for about 12½

¹ 2022 SCC OnLine SC 697

years. The appeal is of the year 2017 and the prospect of the appeal being heard in the immediate near future appears to be bleak.

6. Considering the aforesaid and the fact, that the applicants are in custody for 12½ years, the application is allowed and the applicants sentences are suspended and they are enlarged on bail, pending the hearing and final disposal of their appeal, on the following terms and conditions;

ORDER

- i) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or two local sureties in the like amount;
- ii) The Applicants shall report to the trial Court, once in three months on the day/date specified by the trial Court, till their Appeal is finally disposed of;
- iii) The Applicants shall keep the trial Court informed

of their current address and mobile contact number and/or change of residence or 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.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.