



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 1650 OF 2023
IN
CRIMINAL APPEAL NO.122 OF 2021**

Ajay @ Krishnachand Jagdish ...Applicant
Pandey

Versus

1. The State of Maharashtra ...Respondents
2. Sandhya Prafulla Patil

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Vinayak Patil, Mr. Mohsin Khan, Mr. Umair Ansari and Mr. Pradeep Singh for the Applicants.

Mr. V. B. Konde Deshmukh, APP for the State.

Mr. R. D. Suryawanshi for Respondent No.2.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 22nd AUGUST 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant by judgment and order dated 22nd October 2019 passed by the learned Additional Sessions Judge, Mumbai in Session Case No. 720 of 2011 alongwith Session Case No. 681 of 2012 has been convicted alongwith other accused as under:

— for the offence punishable u/s. 120B of the IPC and to suffer imprisonment for life and pay fine of Rs.50,000/-, in default, to suffer further RI for three years;

— for the offence punishable u/s. 302 r/w. 34 of the IPC and to suffer imprisonment for life and pay fine of Rs.50000/-, in default, to suffer further RI for three years.

Both the sentences were directed to run concurrently.

4. Perused the papers. Prosecution case rests on direct as well as circumstantial evidence. The direct evidence adduced by the prosecution is that of two eye witnesses i.e. PW-8 Sukhdev Padwal and PW-29 Ganesh Raut.

5. As far as PW-8-Sukhdev Padwal is concerned, although the said witness has identified the applicant in the TI parade, he has not identified the applicant in the court. Same is evident from paragraph 4 last line of PW-8-Sukhdev Padwal's evidence.

6. As far as PW-29 Ganesh Raut is concerned, he has identified the applicant both in the TI parade as well as in the court.

7. Learned Senior Counsel for the applicant submits that a perusal of the cross examination of the said witness i.e. PW-29 Ganesh Raut would reveal, that the police had gone with the said witness inside the jail in the identification room and showed the applicant, who he had to identify. The said witness has further in his cross stated that the police had showed him the photograph and the person, and therefore, he identified the applicant.

8. Considering what is stated aforesaid by PW-29 Ganesh Raut in his cross examination, prima facie identification of the applicant in the TI parade, becomes doubtful.

9. As far as circumstantial evidence is concerned, it appears that there is recovery of clothes and a chopper at the instance of the applicant on 3rd June 2010 (the incident alleged to have taken place on 8th May 2010 and the applicant was arrested on 2nd June 2010). The witness examined by the prosecution i.e. panch witness being PW-36 Ajay Ramji Rathod, has turned hostile. As far the officer who was present at the time of recovery panchnama is concerned, he was examined by the prosecution as PW-44. The said witness i.e. PW-44-Rajendra Narayanrao Mohite has in his evidence stated that the applicant was ready to show the articles i.e. clothes and chopper.

10. Learned Senior Counsel for the applicant relied on the judgment of the Apex court in the Case of ***Raosaheb Balu Killedar Vs. State of Maharashtra***¹. He submitted that from the evidence that has come on record i.e. of PW-44, it is evident that the applicant only had the knowledge where the articles were kept and would not indicate that it was ‘conscious possession’ so as to connect him with the recovery in question.

1 (1995) Criminal Law Journal 2632

11. As far as recovery of motor cycle is concerned, he submits that the said motor cycle was recovered after 77 days of the incident. He submits what was found in the dikki of the motor cycle, are articles belonging to co-accused no. 2. He submits that the accused no. 2 has been enlarged on bail and that the nature of evidence is more or less similar to that of accused no. 2 who has been enlarged on bail.

12. Considering what is stated aforesaid and the evidence on record, and the fact, that the applicant is in custody for more than 12 years, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions :

ORDER

- (i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- 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 his 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.

13. Interim Application is allowed in the aforesaid terms and accordingly disposed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.