

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL INTERIM APPLICATION NO. 1725 OF 2023  
IN  
CRIMINAL APPEAL NO. 127 OF 2021

1. Shivprasad Balgovind Kesari @ Shiva  
2. Shivkumar Pathru Bhardwaj @ Shiva ...Applicants

Versus

The State of Maharashtra ...Respondent

Dr. Yug Mohit Chaudhry, for the Applicants.

Ms. S.S.Kaushik, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &  
GAURI GODSE, JJ.**  
**DATE : 19TH JUNE, 2023**

**P.C. :**

1. By this interim application, the applicants seek stay of the impugned Judgment and Order dated 7<sup>th</sup> December, 2020, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi,

Mumbai, in Sessions Case No. 86 of 2013, only to the extent, that it directs in clause (1) imprisonment for life, which shall mean, ‘**till the end of his natural life**’, and clause (7) of para 79. The part (in bold) of the said clause (1) of para 79 of which stay is sought, reads thus;

*“(1) The accused no.1 Shivprasad Balgovind Kesari @ Shiva and the accused No.2 Shivkumar Patharu Bhardwaj @ Shiva are hereby convicted of the offence punishable under Section 302, read with Section 34 of the Indian Penal Code, 1860, vide Section 235 of the Code of Criminal Procedure, 1973. The accused No.1 Shivprasad Balgovind Kesari @ Shiva is hereby sentenced to imprisonment for life, which shall mean, till the end of his natural life, and is, also, sentenced to pay fine of Rs.10,00,000/- (Rs. Ten Lacs Only), and in the case of default in the payment thereof, to undergo further rigorous imprisonment, for a term of three years. The accused No.2 Shivkumar Patharu Bhardwaj @ Shiva is hereby sentenced to imprisonment for life, which shall mean, ‘**till the end of his natural life**’, and is, also, sentenced to pay fine of Rs.1,00,000/- (Rs. One Lac Only), and in the case of default in the payment thereof, to undergo further rigorous imprisonment, for a term of three years.” (emphasis supplied)*

2. Clause (7) of the impugned order of which, stay is sought, reads thus;

*“(7) This Court expects, that the appropriate Government may abstain from releasing the accused on parole, and also, from commuting or remitting the*

*sentence, looking to the peculiar facts and circumstances of this case.”*

3. Learned Counsel for the applicants submits that the said direction given by the Trial Court is contrary to the Judgment of the Apex Court. In support of his submission, Learned Counsel relied on the Judgments of the Apex Court in the case of ***Vikas Chaudhary V/s. The State of Delhi***<sup>1</sup> as well as the Constitution Bench of the Apex Court in the case of ***Union of India V/s. Sriharan @ Murugan***<sup>2</sup>.

4. Perused the papers. The applicants, vide the Judgment and Order dated 7<sup>th</sup> December, 2020, passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No. 86 of 2013, have been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and sentenced to imprisonment for life, which shall mean, ‘***till the end of his natural life***’ alongwith fine.

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1 2023 SCC OnLine SC 472

2 (2016) 7 SCC 1

5. The Constitutional Bench of the Apex Court in Sriharan's case, in para 104 observed as under;

*“104. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.”*

6. Similarly, the Apex Court in the case of **Vikas Chaudhary (Supra)**, relying on the Constitutional Bench of **Sriharan (Supra)** in para 18, has observed as under;

*“18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan (Supra) are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, per force provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances – the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformatory element*

*acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e. the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused ) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused).”*

7. It is thus, clear that the trial Court is foreclosed from imposing such a modified or specific term of sentence for life imprisonment for the remainder of the convict’s life. Similarly, the trial Court could not have directed the appropriate Court from abstaining from releasing the applicant on parole, and also, from commuting or remitting the sentence. In this context, reliance is placed on the Judgment of the Apex Court in the case of ***Manohar @ Manu V/s. The State of Karnataka***<sup>3</sup> Learned APP does not dispute the

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3 Criminal Appeal No. 564 of 2021 dated 6<sup>th</sup> July, 2021

said legal position.

8. In view of the aforesaid and having regard to the Constitutional Bench Judgment of the Apex Court in the case of *Sriharan (Supra)* and *Vikas Chaudhary (Supra)*, the application is allowed and the impugned order only to the extent that it imposes life sentence '*till his natural life comes to an end*'(only the italic and bold portion) and clause (7) of the impugned order, which is reproduced above, are stayed, pending the hearing and final disposal of the their appeal.

9. Accordingly, the application is disposed of on the aforesaid terms.

10. Needless to state, that since we have stayed the aforesaid order to the extent aforesaid, it is now open for the appropriate authority to consider any application of the applicants, seeking parole/ furlough, on its own merits, in accordance with law.

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

**GAURI GODSE, J.**

**REVATI MOHITE DERE, J.**