

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

**INTERIM APPLICATION NO.2257 OF 2023
IN
CRIMINAL APPEAL NO.1061 OF 2021**

Subhash Ramesh Kengar Applicant
Versus
State of Maharashtra Respondent

Miss. Vrushali Maindad, Advocate a/w. Shaheen Kapadia,
Shrushti Tupe, Mahenoor Khan, for the Applicant.
Smt. P.P. Shinde, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
N. J. JAMADAR, JJ.**

DATE : 10th AUGUST, 2023

P.C. :

1. This is the second bail application preferred by the original accused No.2 in Sessions Case No.823/2016 before the Additional Sessions Judge, Pune.

2. The Applicant has preferred Criminal Appeal No.1061/2021. On the first occasion, he had preferred Criminal Interim Application No.3127/2021 in that appeal. Vide order dated 17.3.2022, that application for bail pending the appeal was rejected by a reasoned order.

3. Learned counsel for the Applicant submitted that since passing of that order on 17.3.2022, the Appeal is not heard and it is still pending and, therefore, the Applicant has preferred this second bail application. Therefore, in the interest of justice, we have again heard learned counsel for the Applicant on the merits of the matter. We have perused the evidence of PWs-1, 2, 3, 5 & 9. We have also perused the order dated 17.3.2022 whereby the first bail application was rejected.

4. Learned counsel for the Applicant submitted that PW-3 is not believable. There was darkness at the spot and, therefore, he could not have identified the Applicant. She submitted that the injuries do not show presence of glass pieces in the body of the deceased. His evidence is doubtful. She submits that PW-5 was a Police Naik who was on patrolling duty in that area. PW-5 has deposed that, at about 2.00 a.m., when he and his colleague were patrolling in the area they were told by some boys that some quarrel was going on nearby. PW-5 went there to find the deceased in an injured condition. There was broken beer bottle and a stone lying at the spot. Learned counsel submitted that this witness speaks about the time of the alleged incident as

‘2.00 a.m.’, whereas PW-3 has deposed that the incident had taken place at around 12.00 a.m.. Moreover, PW-5 does not speak about the presence of PW-3.

5. We have considered these submissions. PW-3 has deposed that he returned back from his duty at 12.00 a.m. in the night; after that, he had seen the incident. He has not mentioned the time of the alleged incident. However, his evidence is corroborated by the medical evidence which shows that the deceased had suffered as many as 24 serious injuries. There was skull fracture and fracture of the ribs. The cause of death was mentioned as ‘death due to crush injury to head with blunt trauma to chest and abdomen’.

6. Apart from this direct evidence of PW-3 and the medical evidence, there is evidence of two more witnesses i.e. PW-1, who was mother of the deceased Suraj and PW-2 who was the brother of the deceased Suraj. Both of them have stated that the accused, including the present Applicant, had taken away the deceased Suraj on a two wheeler in the night and Suraj did not return throughout the night. Therefore, there is evidence of ‘last

seen together' as well. All these factors, form incriminating evidence against the present Applicant.

7. This evidence was considered when the earlier order was passed on 17.3.2022. We are not inclined to take a different stand. However, by the same order, it was specifically directed that the Criminal Appeal be listed for final hearing on the weekly final hearing board commencing from 11.4.2022. Till date, the Appeal is not heard. Learned counsel for the Applicant is at liberty to make appropriate application before the appropriate Bench taking up final hearing of these Appeals for early disposal of the Appeal. Learned A.P.P. does not have any objection if the Appeal is decided at the earliest.

8. With these observations, this Application is rejected.

(N.J. JAMADAR, J.)

(SARANG V. KOTWAL, J.)

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PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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