

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

**INTERIM APPLICATION NO. 2559 OF 2022
IN
CRIMINAL APPEAL NO.666 OF 2012**

Balaram Sukrya Mhatre
Age 60 years, R/o Padale village
Mothi Desai, Shilphata road,
Taluka Kalyan, Dist.Thane
(at present lodged in Kalmbe jail,
Kolhapur)

... Applicant/Org.Accused
No.1.

Versus

The State of Maharashtra
(At the instance of Vikhroli
Police station vide C.R. No.
249 of 2004 and DCB CID
Unit-VII, vide CR No.152 of 2004) ... Respondent.

....

Mr Raju Suryawanshi, Advocate for Applicant.

Smt.GP Mulekar, APP for the Respondent-State.

....

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

DATE : 24 JANUARY 2023.

P.C. :-

. Accused No.1- Balaram Sukrya Mhatre has invoked the provisions of Section 389(1) of the Code of Criminal Procedure, for suspension of sentence and grant of bail, after having suffered conviction u/s 304 of the Indian Penal Code.

2. Learned Counsel for the Applicant has invited attention of this Court, to the Order dated 25.10.2013, in the case of Pradeep Oliver D'mello Vs. The State of Maharashtra, in Criminal Application No.1253 of 2013 in Criminal Appeal No.605 of 2012, wherein, prayer u/s 389(1) of Cr.P.C. of the aforesaid co-accused was rejected, as there was prima facie evidence. The Court has relied on the evidence of PW 3 Vijay for the purpose of rejection of complaint.

3. Thereafter, the said Accused preferred Writ Petition No.2459/2019, which was allowed by this Court vide order dated 10.1.2023, wherein, the Division Bench has passed the following order.

: ORDER :

(a) The impugned order dated 6th December, 2018 refusing to grant premature release to the petitioner is quashed and set aside;

(b) The petitioner is placed in category-I of Annexure-II relating to Section 304 (Part 1) of the IPC of the Guidelines for Premature Release under the "14 year Rule" of Prisoners serving Life Sentence dated 15th March, 2010;

(c) The prison Authorities are directed to release the petitioner forthwith.

4. In the aforesaid background, this Court has called upon learned APP to appraise this Court as to the period for which the Applicant has undergone the sentence. We are informed from the report of the Additional Senior Jailor, Thane, that the Applicant has undergone 16 years of life imprisonment, as against the punishment awarded u/s 304 of the IPC.

5. Learned APP in the aforesaid background, submits that considering the gravity and seriousness of the offence in which, the Applicant was convicted, the Court should not direct his release as he might indulge into similar type of criminal acts.

6. We have appreciated the submissions. In the matter of the co-accused Pradip Oliver D'mello, delivered by this Court, in Criminal Writ Petition No.2459 of 2019 vide order dated 10th January 2023, directed premature release in the very same crime, in which the Applicant is also seeking relief. In the said case also, the Accused Pradip D'mello has undergone imprisonment of 16 years and 3 months and 5 days, inclusive of remission, which is similar fact in case in hand also.

7. As the iota of evidence available against the said co-accused Pradip D'mello, so also the present applicant is identical, and this Court vide order dated 10th January 2023 has directed premature release of the said Accused, against the very same Judgment of conviction, in our opinion, case for grant of release is made out. Hence, the following order.

ORDER

- (a) Sentence stands suspended.
- (b) The Accused be released on executing

PR Bond of Rs.25,000/- with one or more
sureties in the like amount.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]