



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2686 OF 2023
IN
CRIMINAL APPEAL NO. 915 OF 2023

Shamkumar Shatrughna Mandal ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Keshav S. Chavan, for the Applicant.

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

*CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.*
DATE : 17th OCTOBER, 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, vide Judgment and Order dated 22nd February, 2023, passed by the learned Additional Sessions Judge, City Civil Court, Mumbai, in Sessions Case No. 507 of 2015, has been convicted as under:-

- for the offences punishable under Sections 302 and 459 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default, to suffer further simple imprisonment for one month on each count separately;
- for the offences punishable under Sections 381, 397, 120B of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay a fine of Rs. 2,000/-, in default, to suffer further simple imprisonment for one month on each count of offence;

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests entirely on circumstantial evidence. The circumstances relied upon by the prosecution are (i) last seen (ii) recovery of ornaments/currency

(iii) Test Identification Period and (iv) CCTV footage. Learned Counsel for the applicant submits that admittedly, the trial Court has disbelieved the evidence of P.W.5 – Chandramani Ramdev Dubey on the point of last seen and Test Identification Parade. Learned Counsel for the applicant submits that the chain of circumstances has not been proved by the prosecution and that mere recovery of ornaments from the applicant after 2-3 days by itself would not show the complicity of the applicant in the alleged crime. He submits that the possibility of the applicant being receiver of the stolen property in the circumstances cannot be ruled out. He further submits that the applicant is in custody for last 8½ years.

6. Learned APP does not dispute the circumstances as aforesaid and the fact, that the trial Court has disbelieved the evidence of P.W.5 – Chandramani Dubey with respect to last seen and Test Identification. She submits that the ornaments/cash were seized from the applicant after 2-3 days and that the said ornaments belonged to the deceased.

7. It is not in dispute that the applicant is in custody for the last 8½ years. The appeal is of the year 2023 and the same is not likely to be heard in the immediate near future.

8. Considering the evidence as stated aforesaid *qua* the applicant and the fact, that the applicant is in custody for 8½ 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 his 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 local surety in the like amount;
- ii) The applicant shall not leave the State of Maharashtra, without the leave of this Court, pending his appeal.

iii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iv) The applicant shall keep the trial Court informed of her current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) The applicant shall file an undertaking with regard to clauses (iii) in the trial Court, within two weeks of his release;

vi) 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.