

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

***INTERIM APPLICATION NO. 3435 OF 2023
(For Bail and Suspension of Sentence)
IN
CRIMINAL APPEAL NO. 1047 OF 2023***

Sudhakar Rajaram Mane ...Appellant/Applicant
Versus
The State of Maharashtra & Ors. ...Respondents

Ms. Stefy Dias i/b Mr. Umesh R. Mankapure for the
Appellant/Applicant

Ms. P. P. Shinde, A.P.P for the Respondent No.1-State

None for the Respondent Nos. 2 and 3

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 20th DECEMBER 2023**

ORAL ORDER (Per Revati Mohite Dere,J.) :

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 the aforesaid appeal.

3 The applicant (original accused No.5) along with other co-accused vide judgment and order dated 29th July 2013, passed by learned District Judge-2 and Additional Sessions Judge, Islampur in Sessions Case No. 46 of 2007, has been convicted and sentenced as under:

- for the offence punishable under Section 302 r/w 149 of the Indian Penal Code, to suffer life imprisonment and to pay fine of Rs.3,000/- each, in default, to suffer simple imprisonment for two months;
- for the offence punishable under Section 143 of the Indian Penal Code, to suffer rigorous imprisonment for three months and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month;

- for the offence punishable under Section 147 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month;
- for the offence punishable under Section 148 of the Indian Penal Code, to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month;
- for the offence punishable under Section 452 r/w 149 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month;
- The applicant Nos. 1 and 2 were also convicted for the offence punishable under Section 3 r/w 25 of the Arms Act, to suffer rigorous imprisonment for two years and to

pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month;

- The applicant Nos. 1 and 2 were also convicted for the offence punishable under Section 5 r/w 27 of the Arms Act, to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month.

All the substantive sentences were directed to run concurrently.

4 Learned counsel for the applicant submits that the applicant is incarcerated in jail for about 16 years i.e. from 2007. Learned counsel relied on the judgment of the Apex Court in the case of *Saudan Singh v. State of Uttar Pradesh*¹, in support of his submission that in cases where the applicants have undergone 10 years, the Apex Court has released the applicants therein, on bail on certain terms and conditions.

1 2022 SCC OnLine SC 697

5 Learned counsel for the applicant seeks bail on the ground of parity. She submits that similarly placed co-accused Jayawant Patil, Manik Patil, Dhanaji Patil and Babalya @ Indrajeet Patil's sentences have been suspended and they have been enlarged on bail by this Court (Coram : Revati Mohite Dere & Gauri Godse, JJ.) vide order dated 13th June 2023 passed in Interim Application No. 4307/2022 filed in Criminal Appeal No.1073/2013. The said order is at Exhibit 'A' at page 13 of the application. She also seeks bail on medical grounds. She submits that the applicant is a HIV patient.

6 Learned A.P.P does not dispute that the role of the applicant is similar to that of the co-accused, whose sentences have been suspended and who have been enlarged on bail. She submits that there is recovery of a Koyta at the instance of the applicant.

7 We had called for the applicant's medical report, considering the medical condition as disclosed to us by the learned counsel for the applicant. Pursuant thereto, the learned A.P.P tenders applicant's medical report dated 19th December 2023. The same is taken on record.

8 Perused the papers, in particular, the evidence of PW10 and PW11 (eye-witnesses). The incident is alleged to have taken place on 6th September 2007. According to the eye-witness PW10, he was to take Mahesh (deceased) with him home for lunch and hence, he went on his motorcycle towards the shop; that when he reached the shop at about 2:00 p.m. he saw a crowd in front of the tailoring shop; that some persons were standing outside the shop, holding sticks in their hands (the said accused who were standing outside the shop have been granted bail by this Court); that he saw the co-accused–Jayawant Patil, Manik Patil, and Ganesh Patil coming out of the tailoring shop holding pistols in their hands and the other accused armed

with koyta, stained with blood; that being terrified, he stepped back; that after the accused fled from the spot, he entered the shop and saw Mahesh and Umesh lying in a pool of blood with injuries on their person. According to PW10, thereafter he went to the police station to lodge an FIR/complaint and accordingly, lodged the complaint with the police and thereafter, again returned to the spot.

9 As far as PW11 is concerned, she has stated that she had carried lunch for her husband–Mahesh and brother-in-law Umesh on the said date i.e. 6th September 2007, as her husband –Mahesh had asked her to bring lunch; that she saw some accused entering the shop and some accused standing outside; that the accused were assaulting her husband–Mahesh and that after seeing the said scene, she became unconscious.

10 *Prime facie*, we do not find serious infirmities or discrepancies between the evidence of PW10 and PW11 as

contended by the learned counsel for the applicant. The same would have to be considered after a detailed examination of the overall evidence that has come on record, at the time of final hearing of the appeal.

11 It is not in dispute that the role of the applicant is similar to that of co-accused Jayawant Patil, Manik Patil, Dhanaji Patil and Babalya @ Indrajeet Patil, who have been enlarged on bail. The applicant is languishing in jail for about 16 years. It appears from the the medical report tendered by the learned A.P.P dated 19th December 2023, that the applicant is a known case of Diabetes-II, HIV, Hyperlipidimia and seizure disorder since 2021 and he is under regular treatment for the same and he was referred to the Government CPR Hospital, Kolhapur, on several dates for follow-up for his illness.

12 Although learned A.P.P states that the applicant, whilst on bail, had absconded, we, in the facts of the present

case, having regard to the medical condition of the applicant and that the applicant has been incarcerated in jail for about 14 years (2 years he was absconding) and having regard to the ground of parity with the co-accused, we deem it appropriate to allow the application and suspend the applicant's sentence and enlarge him on bail.

13 Accordingly, 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.1,00,000/-, with one or more local sureties in the like amount;
- ii) The applicant shall not intimidate or contact the family members of the deceased or any other witnesses concerned with the said case;

iii) The applicant shall, during the said period, report to the Kolhapur City Police Station, once a fortnight i.e. on the first and third Saturday of every month, between 10.00 a.m. and 12.00 noon;

iv) The applicant shall keep the trial Court and the Kolhapur City Police Station, informed of his current address and mobile contact number and/or change of residence or mobiles details, if any, from time to time.

14 The Application is disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.