



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3989 OF 2023
IN
CRIMINAL APPEAL NO. 702 OF 2023

Pratik @ Golu Arun Sathale

...Applicant

Versus

State of Maharashtra and another

...Respondents

Mr. Niranjan S. Mundargi a/w Mr. Rushikesh Kale and Mr. Shubham Bandal for the applicant

Mr. J. P. Yagnik, APP for the State

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 9th NOVEMBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant-original accused no. 2 seeks his enlargement on bail pending the hearing and final disposal of his aforesaid appeal.
3. Applicant, vide Judgment and Order dated 21st October 2022 passed by the Additional Sessions Judge, Pune in Sessions Case No.

770 of 2017 has been convicted and sentenced along with another co-accused-Shubham Jamnik as under:

- for the offence punishable under section 302, read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and fine of Rs. 1,25,000/-, in default, to suffer simple imprisonment for one year.
- for the offence punishable under section 201, read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and fine of Rs. 25,000/-, in default, to suffer simple imprisonment for six months.

Both the sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. It is the prosecution case that the applicant alongwith co-accused no. 1-Shubham Jamnik kidnapped the complainant's daughter aged 4 years and thereafter, killed her. FIR was lodged by the complainant – Amol Arude, initially for offence

punishable under section 363 of the Indian Penal Code. Subsequently, on the dead body being found, section 302 and 201 of the Indian Penal Code came to be added. Admittedly, charge has not been framed under section 363 of the Indian Penal Code as against the accused. The prosecution case rests entirely on circumstantial evidence. According to the prosecution, two pillows were recovered at the instance of the applicant, however, recovery of the said pillows cannot be said to be incriminating, as the prosecution has not brought forth evidence, as to how the said pillows were used in the commission of the offence. As far as P.W. 10-Sarika Kshirsagar is concerned, he has stated that initially both the accused helped the complainant in searching for the complainant's daughter (deceased) and thereafter, went out of station and that when they left, they had red a coloured bag with them. It is the prosecution case that when the dead body was recovered at the instance of accused no. 1-Shubham Jamnik, a red piece of bag was found at the instance of the co-accused no. 1-Shubham Jamnik. There is no evidence to show that the applicant was carrying the bag. From a perusal of the Judgment, in particular,

paragraph nos. 26 and 27 of the Judgment, it appears that the learned Judge whilst convicting the applicant has laid great emphasis on the pleadings made by the applicant in his bail application filed by his lawyer. Learned Judge has quoted the pleadings made in the bail application.

5. Learned counsel for the applicant states that the reliance placed on the pleadings made in a bail application which was not signed by the applicant, cannot form the basis for convicting the applicant.

6. There appears to be substance in the said submission. As noted, no other evidence has come on record to connect the applicant with the alleged offence. Apart from what is stated aforesaid, the applicant has been in custody since 2017 and the appeal is not likely to come up for hearing in the immediate near future. Considering the same, 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 or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) 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.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.