

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

***INTERIM APPLICATION NO.4038 OF 2023
(SUSPENSION OF SENTENCE & BAIL)
IN
CRIMINAL APPEAL NO.425 OF 2013***

Ganesh Hanumant Ghuge	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Sushan Mhatre, Advocate Appointed for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.***

DATE : 10th NOVEMBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application filed through legal aid, the applicant (original accused No.1) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant alongwith other co-accused vide judgment and order dated 20th November 2012 passed by the learned Additional Sessions Judge, Solapur in Session Case No. 276 of 2008 has been convicted as under:

— for the offence punishable u/s. 364 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for six months;

— for the offence punishable u/s. 365 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months;

— for the offence punishable u/s. 302 r/w. Section 34 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one year;

— for the offence punishable u/s. 342 r/w. Section 34 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 15 days;

— for the offence punishable u/s. 384 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months;

— for the offence punishable u/s. 201 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for six months.

All the aforesaid sentences were directed to run concurrently.

After deposit of fine amount by accused persons, an amount of Rs.25,000/- was directed to be paid to the complainant as compensation under Section 357 of the Code of Criminal Procedure.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused –

Lally @Raviraj Suresh Lengare's sentence was suspended and he was enlarged on by this Court vide order 6th October 2023. According to the learned counsel for the applicant, the only circumstance as against the applicant is CDR records, which show that the applicant was in touch with the other accused. He submits that apart from the said evidence, there is no other material or evidence to connect the applicant with the alleged offence.

5. Learned APP submits that apart from the CDR records, there is recovery of an adhesive tape and rope, which were allegedly used to gag the deceased. She further submits that there is recovery of money at the instance of the applicant.

6. Perused the papers. The prosecution case rests entirely on circumstantial evidence i.e. CDR exchanged between the accused, recovery of adhesive tape, rope and recovery of money. As far as recovery of adhesive tape and rope is concerned, the same cannot be said to be incriminating, inasmuch as, the prosecution has not been

able to show that this is the very tape or rope, which was used in the commission of the offence i.e. to gag the deceased. As far as the recovery of money is concerned, the same is not identifiable, so as to show that the same belonged to the deceased. This is the only evidence on record as stated aforesaid. The applicant is in custody for the last 15 years.

7. Considering what is stated aforesaid, 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 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.15,000/- 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.

8. Interim Application is allowed in the aforesaid terms and accordingly disposed.

9. Learned APP to forthwith communicate the above order to the Superintendent, Open Distict Prison, Paithan, District Aurangabad, so as to enable the Superintendent to produce the applicant before the concerned Court, to enable the applicant to furnish P.R. Bond in the sum of Rs.15,000/- with one or two sureties

in the like amount.

10. The concerned Court before whom the applicant is produced, to explain the operative part of the order to the applicant.

11. Stand over to **30th November 2023**. To be listed under the caption 'for compliance.'

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.