



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3987 OF 2022
IN
CRIMINAL APPEAL NO. 309 OF 2021

Kalpesh @ Chotu Ramnath Saroj

...Applicant

Versus

The State of Maharashtra and another

...Respondents

Mr. Nitin Sejpal a/w Mrs. Pooja Sejpal, Ms. Akshata Desai and Ms. Sakshi Jha for the applicant

Mrs. P. P. Shinde, APP for the State

Ms. Ilsa Shaikh for the intervener

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 18th 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 his aforesaid appeal.
3. The applicant vide Judgment and Order dated 3rd March 2021

passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 743 of 2012 has been convicted alongwith another co-accused Ravindrakumar Yadav as under:

— For offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in default to undergo further simple imprisonment for six months;

— For offence punishable under Section 364-A of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in default to undergo further simple imprisonment for 6 months.

— For offence punishable under Section 389 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in default to undergo further simple imprisonment for 6 months.

All the aforesaid sentences are directed to run concurrently.

4. Perused the papers. The prosecution case rests on circumstantial evidence. As far as the applicant is concerned, the circumstances alleged are recovery of the dead body of the deceased, at the instance

of the applicant and seizure of the sim card of the deceased, from the person of the applicant. According to the prosecution, the applicant was apprehended soon after a bag containing ransom money was handed over to Ravindrakumar Yadav(original accused no. 2).

5. We have perused the evidence pertaining to the aforesaid circumstances as against the appellant.

6. As far as P.W. 1-Ramchandra Sriram is concerned, he has set out how he received a call on 13th August 2012 at about 2.45 p.m. from his son's (deceased) mobile asking him for ransom; that the calls continued till the next date; that the ransom money was handed over as directed to a person in a green tea-shirt at Jogeshwari. P.W.1-Ramchandra has stated that he went to the co-accused Ravindrakumar and handed over the money; that the police apprehended the said person alongwith money. He has identified the said person to be Ravindrakumar Yadav. (co-accused No. 2) He has further stated that after receipt of the amount, Ravindrakumar went to an auto-rickshaw where two persons were present and that the applicant was also

apprehended by the police. The evidence of P.W.2-Dharmendra Chavan, a panch witness is that he was present alongwith the police and P.W.1 on 14th August 2012. According to P.W.2-Dharmendra when the complainant went and handed over the bag to Ravindra, the said person on foot proceeded towards the rickshaw and was talking with another person; that thereafter, they both occupied the rickshaw; that one police official went in the said rickshaw as passenger whereas he alongwith another panch occupied another auto-rickshaw; that their rickshaw overtook the rickshaw of the said two persons, pursuant to which the police apprehended two persons i.e. the applicant and Ravindrakumar Yadav. The said version set out by P.W. 2 appears to be prima facie inconsistent to what was disclosed by P.W. 1 in his evidence. It is not clear as to who the third person was and the involvement of the said person. As noted from the evidence of P.W. 1, Ravindrakumar was handed over the ransom money and apprehended by the police on the spot, whereas evidence of P.W. 2 is as stated above.

7. As far as recovery of the dead body at the instance of the

applicant is concerned, P.W. 1-Ramchandra in his cross-examination in para 19 has stated that one Suresh Jadhav was helping him to search his son Ganesh from 14th August 2012; that one of his sons alongwith Suresh Jadhav and police had been to the spot where the dead body was found on Mumbai-Ahmadabad road in a creek on 15th August 2012.

8. As far as P.W. 4-Nitin Keni is concerned, the substantive evidence prima facie shows only knowledge where the dead body was kept and does not disclose that he had concealed the said dead body. It has come in the cross-examination of P.W. 4-Nitin that the body was not concealed but was visible. As far as recovery of the deceased's sim card at the instance of the applicant is concerned, no evidence has been collected by the prosecution to show that the deceased was using the mobile number (sim card). The prosecution has not adduced evidence that the said sim card was being used by the deceased since CDR/SDR were not collected by the prosecution. The deceased's bag allegedly recovered from the applicant was recovered from the house occupied not only by the applicant, but also by the applicant's mother-in-law

and as such, it cannot be said that the applicant was in exclusive possession of the said premises. Admittedly, no blood stains were found on the clothes of the applicant, although according to the prosecution, he was apprehended immediately. Even otherwise, the applicant is in custody since 14th August 2012 for more than 12 years. Appeal is of the year 2021 and the said appeal is not likely to come up for hearing in the immediate near future.

9. Considering the 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. 25,000/- with one or two sureties in the like amount;
- ii) 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;

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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.