

Iresh

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

**INTERIM APPLICATION NO. 4007 OF 2023
IN
CRIMINAL APPEAL NO. 877 OF 2017**

Pritam Appasaheb Changale

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Anush Shetty i/b Dr. Yug Mohit Chaudhary for the applicant
Mr. V. B. Konde Deshmukh APP for the State

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

DATE : 7th NOVEMBER 2023

P.C. :

1. Heard learned counsel for the parties.

2. This is the third bail application preferred by the applicant seeking suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant alongwith other co-accused vide judgment and order dated 11th September 2017 passed by the learned Session Judge,

Nashik in Sessions Case No. 117 of 2014 has been convicted and sentenced as under :

— for the offence punishable under section 302 r/w section 34 of Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs.1000/- in default, to suffer rigorous imprisonment for three months.

4. At the outset, we may note that the first bail application of the applicant was allowed to be withdrawn with liberty to file fresh application for bail after a period of two years. The said order is dated 29th November 2017 and is at Exhibit D at page 123 of the application. Subsequently, pursuant to the liberty granted, the applicant filed a second bail application. The said application was also withdrawn as the court was not inclined to grant bail to the applicant.

5. This is the third bail application. Learned counsel for the applicant submits that the applicant is in custody since 7th January 2014 for more than nine years.

6. Perused the papers. Admittedly, the three eye-witness examined

by the prosecution have been disbelieved by the learned Judge and so is the dying declaration. The conviction of the applicant is based only on recovery of blood stained chopper, sickle and clothes, at the instance of the applicant. This is the only evidence on which the applicant has been convicted.

7. The applicant also seeks his enlargement on bail on the ground of parity. He relies upon the order dated 7th October 2023 passed in Interim Application No. 1506 of 2022 in Criminal Appeal No. 502 of 2022. By the said order, accused no. 3-Sagar Khairnar is enlarged on bail pending the hearing and final disposal of his appeal. Learned counsel for the applicant states that the role attributed to the applicant is similar to that of accused no. 3-Sagar Khairnar who is already enlarged on bail. He submits that the only difference is regarding recovery of weapon i.e. blood stained knife and clothes were recovered from the accused no. 3-Sagar Khairnar.

8. Learned APP does not dispute the aforesaid. Considering the

aforesaid fact, that the conviction is only based on the recovery of chopper, sickle and clothes and having regard to the fact, that the applicant is in custody for more than nine 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 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.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 the 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 is accordingly disposed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.