

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

**INTERIM APPLICATION NO.3953 OF 2023
IN
CRIMINAL APPEAL NO.568 OF 2022**

Siraj Fakruddin Ansari @ Foreigner ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Aniket Vagal a/w Mr. Kunal Pednekar, Mr. Divesh Mehani, Mr. Savvy Kolhekar, Advocate for the Applicant.

Mrs. M.M. Deshmukh, Additional PP. for Respondent-State.

Mr. Sagar Pawashe, PSI, Kherwadi Police Station.

**CORAM : PRAKASH D. NAIK, &
N.R. BORKAR, JJ.**

DATE : 19th DECEMBER, 2023

P.C.:

1. This is an Application for suspension of sentence and bail during the pendency of Criminal Appeal No.568 of 2022.

2. The Applicant is convicted vide Judgment and Order dated 11th April, 2022 passed by the Special Judge, MCOCA for greater Bombay in MCOCA Special Case No.3 of 2013 along with the other Accused for the offence under Sections 120-B of Indian Penal Code (for short 'IPC'), Section 394 r/w 120-B of IPC, Section 302 r/w 34 of IPC, Section 333 r/w 34 of IPC, Section 3(1)(i) of MCOCA, Section 3(1)(ii) of MCOCA, Section 3(2) of MCOCA and

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Section 3(4) of MCOCA.

3. The Applicant has been sentenced to suffer imprisonment for life and to a pay fine on different counts.

4. The case of the prosecution is that while the Police were on patrolling duty, they noticed car on the bridge towards Kalanagar Road near highway and ahead of the said car there was swift car. The Police followed the car. The driver of one of the car set it in motion and took it in the direction of Policemen Mr. Sarnobat and gave a dash. Due to which he fell on the road and lost consciousness.

5. Learned Advocate for the Applicant submitted that the previous application for bail was withdrawn vide Order dated 21st December, 2022. The Applicant is in custody for a substantial period of time. Two other Accused were released on bail by this Court. PW-3 has not seen the occupants of the car. According to PW-4 Accused No.1 was driving the car. The role assigned to Accused No.4/Applicant is that he is one of the occupant of the car. No overtact is attributed to him. The cause of death of the deceased is brain hemorrhage. The Applicant is entitled for bail on parity.

6. Learned APP could not dispute the fact that co-accused Anil Ramesh Soni @ Tichki and Raju Satyanarayan Zha @ Raju Hamal were granted bail by this Court vide Order dated 20th October, 2023. The prosecution could not dispute the fact that the overtact attributed to the co-accused who were granted bail cannot be distinguished from the Applicant.

7. While granting bail to Anil Ramesh Soni @ Tichki vide Interim Application No.915 of 2023 and Order dated 20th October, 2023, this Court had observed that the prosecution case rest essentially on evidence of PW-3, PW-4 and PW-6. The deceased ASI Mr. Sarnobat was attached to Kherwadi Police Station. The prosecution has not been able to pinpoint who was driving the Swift Car. One of the contention before Court was that the offence under Section 302 of IPC is not made out. While granting bail, it was observed that the said Accused is in incarceration for 11 years and the Appeal is not likely to be taken up for hearing immediately. Similarly, bail was granted to the Raju Satyanarayan Zha @ Raju Hamal with similar observations. The Applicant is entitled for bail on the ground of parity.

ORDER

- i. Interim Application No.3953 of 2023 is allowed;
- ii. Substantive sentence of imprisonment imposed vide Judgment and Order dated 11th April, 2022 passed in MCOCA Special Case No.3 of 2013 is suspended during pendency of Appeal and the Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two local sureties in the like amount;
- iii. The Applicant shall report Kherwadi Police Station on first Saturday of every month between 10:00 a.m. to 12:00 noon and shall also report to the trial Court, once in three months on the day/dates specified by the trial Court, til the Appeal is finally disposed off;
- iv. The Applicant shall keep Kherwadi Police Station as well as 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.
- v. If there is default in attending the Police Station or two consecutive defaults in appearing before the trial Court, the concerned Police Station/the trial Court shall make report to

the High Court and the prosecution would be at liberty to file an Application for cancellation of bail.

vi. Application stands disposed off.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)