

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APPA) NO. 1054 OF 2022

**IN
CRIMINAL APPEAL NO. 818 OF 2022**

Sheikh Akram @ Bhura Sheikh Rahman and anr.
Vs.

State of Maharashtra, Thru. PSO, PS Sitabuldi, Nagpur.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.P. Dharmadhikari, Senior Advocate a/by Mr. C.S.
Dharmadhikari, Advocate and Mr. T.P. Deshpande,
Advocate for applicant.
Mr. V.A. Thakare, APP for respondent/State.

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 02.08.2023.

Heard.

2. This is an application seeking for suspension of executing of sentence passed under the provisions of the Maharashtra Control of Organized Crime Act, 1999, in Special Case No.3/2013, whereby both appellants have been convicted for the offence punishable under Sections 302, 201 read with 34 of the Indian Penal Code, whilst acquitted from the rest of the charges including the offences under MCOC Act.

3. Though, at this stage, meticulous examination of material is not warranted, however, in the flow of submission both learned counsel took us virtually to entire evidence running in the form of oral version of several witnesses as well as the documents tendered on record. Though, in all six persons were led to face the trial, however, the trial Court held appellants (accused Nos.2 & 3) are guilty for the aforesaid offences whilst acquitted rest of the accused from all charges.

4. The prosecution case relates to the homicidal death of one Rohit Jain occurred in mysterious circumstances. It is prosecution case in nutshell that, on 24.09.2012 both accused beat deceased and buried the dead body in a hut which was possessed by appellant No.1. After three weeks from the occurrence, the things were unfolded though one of the witness which resulted into exemption of body followed by registration of crime.

5. The prosecution case solely rests on circumstantial evidence. In order to established levelled charges the prosecution has examined in all 34 witnesses, who are on different points. Naturally, when the case is based on circumstantial evidence,

several bits and pieces have to be made out to complete the chain so as to exclude the hypotheses of innocence of accused. Mr.Dharmadhikari, learned Senior Counsel appearing for appellants has strongly criticized the impugned judgment by pointing out several deficiencies. It is argued that the trial Court failed to appreciate the oral evidence of material witnesses by sidelining the material contradictions. Our attention has been invited to the portion of the impugned judgment whereby the trial Court held that Rohit Jain met with homicidal death. Besides that, we have been taken through the evidence of some witnesses, on which, the prosecution heavily relied.

6. Basically, the defence made submissions on the ground that the prosecution has not established homicidal death of deceased. Evidence of PW-1 and PW-2 is unreliable for various reasons including non-disclosure and delay in recording statement. Thirdly, though the prosecution has examined PW-6 and PW-8 on the point of establishing last seen theory, however, it is unreliable since, those witnesses were not knowing the deceased at all. Identification of deceased by them on the basis of photograph is highly suspicious. It is

argued that the seizure of the articles is doubtful since chain of custody has not been established. Moreover, there is total absence of motive which is an significant factor in cases of circumstantial evidence. It is pointed out that chemical analyser's report does not confirm the prosecution case that the deceased was assaulted at a specific place namely "Remand Room", as the blood report never matches. To the last, it has been prominently submitted that the appellants are behind bars for more than 10 ½ years and thus, virtually they have undergone the majority of the portion of sentence.

7. The learned APP has countered the submissions by stating that the trial Court has considered in depth the entire material and found to be reliable and trust worthy. It is submitted that PW-1 and PW-2 are the key witnesses who dug a pit, at the instance of appellants where the dead body was buried. It is argued that the concerned hut was in exclusive possession of appellants and thus, in absence of explanation, he has not discharge the burden about special knowledge. We have been taken through the evidence of PW-3 a Painter, PW-4 and PW-5 who are neighboring persons and some

other witnesses, who has to say something rather a bits to complete the chain.

8. We are well aware that, we are dealing the application for suspension, hence, it is undesirable to express any opinion at this stage. The fact remains that the aspect of homicidal death is under question mark. Admittedly, there is no evidence of witnesses who have seen the deceased in the company of accused. We may clarify that though two witnesses have been examined on this point, however, the deceased was admittedly unknown to them. Thus, it is a matter of consideration at the time of trial.

9. Having regard to all these facts certainly arguable case has been made out. Besides factual aspect, we are much influenced by the fact that the appellants are in jail for near about 10 ½ years. Obviously, in case of appellants success in appeal the position would become totally irreversible. We are mindful of the fact that the appellants are having a long criminal history. Though, other side has pointed that the appellants were acquitted in most of the cases, however, the said aspect will be considered while passing the order.

10. In view of that, we feel that the case of suspension has been made out. In the circumstances, following order :-

ORDER

1. Application is allowed.
2. Execution of substantive sentence passed in Special MCOC Case No.3/2013 of appellant Nos.1 and 2, namely **Sheikh Akram @ Bhuru Sheikh Rahman and Pappu @ Kamlesh s/o Dwarkaprashad Gupta**, shall stand suspended till disposal of appeal.
3. The appellants shall be released on bail on their furnishing PR bond of Rs.50,000/- with one surety in the like amount to each.
4. The appellants shall not enter within the territorial limits of entire Nagpur District till the conclusion of appeal except attending Court cases.
5. The appellants shall inform their intended place of residence and mobile number to the Police Station Officer within one week from their actual release.
6. The application stands disposed of accordingly.

JUDGE

JUDGE