

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

***INTERIM APPLICATION NO. 612 OF 2024
IN
CRIMINAL APPEAL NO. 252 OF 2024***

Mallappa Baswant Bansode Applicant
Versus
The State Of Maharashtra Respondent

Mr. Abhijeet P. Rane, Appointed Advocate, for the Applicant.

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

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 22nd APRIL 2024

P.C. :

1. Heard learned Counsel for the parties.
2. By this interim application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant *vide* Judgment and Order dated 8th March 2022, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 129 of 2019, has been convicted under Sections 302 and 376(m) of the Indian Penal Code (“IPC”). For the offence punishable under Section 302 of the IPC, the applicant has been sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, and for the offence punishable under Section 376(m) of the IPC, the applicant has been sentenced to suffer rigorous imprisonment for fifteen years and to pay fine of Rs.10,000/-. Both the sentences were directed to run concurrently.

4. Perused the papers. The prosecution case rests entirely on the circumstantial evidence. The prosecution has essentially relied on the evidence of PW-12 Mallinath, *vis-a-vis* last seen evidence. Having perused the evidence of PW-12 Mallinath and in particular para No.7 of the cross-examination of the said witness, we *prima-facie* find it difficult to place implicit reliance on the said witness. It is pertinent to note that it is the prosecution case, as is evident from the evidence of

PW-6 Mohammed Fulari (son of the deceased), that his mother (deceased) and father went to DCC Bank, Karajagi on 19th January 2019 to withdraw money; that they went in a private vehicle; that they left the house at about 9.00 a.m.; that his father returned home alone at about 2.00 p.m.; and that his mother (deceased) did not return thereafter. PW-6 has stated that when he inquired with his father and asked where his mother was, he replied that she will return after sometime. Thereafter, PW-6's mother did not return and hence he alongwith other relatives went in search of his mother (deceased). It appears that during the search, on the next day, a dead body of an old lady was found, lying in the field of one Rathod, at village Kadabgaon.

5. Admittedly, the father i.e. husband of the deceased has not been examined by the prosecution, for reasons best known, since the father was with the deceased, when they went to withdraw the money from the bank. The DNA report also does not support the prosecution case.

6. Apart from the aforesaid evidence, there is no other evidence *prima-facie* to connect the applicant with the alleged offence. Applicant is in custody for about five years. The appeal is of the year 2024 and the same is not likely to be heard in the immediate near future.

7. 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 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.10,000/- with one or two sureties in the like amount;
- (ii) The applicant shall report to the trial Court, once in six 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. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.