

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2958 OF 2024
IN
CRIMINAL APPEAL NO.446 OF 2019

Akash Bhimrao Varne .. Applicant
Versus
The State of Maharashtra and anr .. Respondents
...

Adv. Pravada Raut for the Applicant in IA No.2958 of 2024.
Adv. S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 14th AUGUST, 2024

P.C:-

1 The application is filed by accused no.4, who stand convicted under Section 302 of IPC and is sentenced to imprisonment for life, seeking suspension of the sentence and for securing his release on bail.

The learned counsel representing the applicant claim parity with co-accused Akash Pawar, being tried as accused no.3, in Sessions Case No.9 of 2016, by the Additional Sessions Judge, Islampur, as even he stand convicted for committing an offence punishable under Section 302, 201, 364, 143, 147, 148 r/w 149 of IPC.

2 We have perused the order dated 2/07/2024, when we considered the application of accused no.3, Akash Pawar and took note, that he has already undergone 9 years, 6 months and 25 days of imprisonment, and was housed in Kolhapur Open prison, Kalamba.

By relying upon the testimony of the informant along with the other 23 witnesses examined by the prosecution, and in light of the admission of P.W.-1 that when the incident took place there was darkness around and therefore, he could not see and a further admission that he had not personally seen the assault on Samir and he was unaware as to how he died, we had concluded that the case of the prosecution is not conclusively proved and, the learned Sessions Judge has failed to consider the lacunae in the case of the prosecution.

We have also recorded that as far as recovery of the dead body is concerned, the same was not proved as the panchas did not support the case of the prosecution and similar was the case of recovery of the motorcycle.

In absence of the prosecution, establishing its case beyond reasonable doubt and in the wake of inconsistency that has surfaced on record before the learned Judge, the interim application was allowed.

3 As far as the present applicant, i.e. accused no.4 is concerned, he also stand on an identical footing as accused no.3, and this fact is not disputed by the learned APP, Mr. Gavand, who make a fair statement that he is entitle to claim parity with the co-accused Akash Arvind Pawar, who is released on bail by order dated

2/07/2024.

4 In the wake of the above, we pass the following order:-

:ORDER:

- (i) Interim Application is allowed.
- (ii) The sentence imposed upon the applicant vide the impugned judgment dated 18/02/2019 in Sessions Case No.09/2016, is hereby suspended during the pendency of the Appeal.
- (iii) The applicant Akash Bhimrao Varne shall be released on bail in connection with C.R. No.149 of 2015 (SC No.09/2016) registered with Ashta Police Station, Sangli, on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties of the like amount.
- (iv) The applicant shall report to the concerned Police Station on first Monday of every three months between 5:00 p.m. to 06:00 p.m.
- (v) Upon release, the applicant shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of any change.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)