

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 4517 of 2024****IN****CRIMINAL APPEAL NO.376 of 2018****WITH****CRIMINAL APPEAL NO. 376 OF 2018**

Sharad Shrirang Sawant .. Applicant

Versus

State of Maharashtra .. Respondent

WITH**CRIMINAL APPEAL NO. 590 OF 2018**

Ramesh Shrirang Sawant .. Appellant

Versus

State of Maharashtra .. Respondent

WITH**CRIMINAL APPEAL NO. 1081 OF 2017**

Subhash Shrirang Sawant .. Applicant

Versus

State of Maharashtra .. Respondent

WITH**INTERIM APPLICATION NO. 1828 OF 2021****IN****CRIMINAL APPEAL NO. 1081 OF 2017**

Subhash Shrirang Sawant .. Applicant

Versus

State of Maharashtra .. Respondent

...

Ms.Payoshi Roy with Madhvi Gomathieswaran for the applicant.
Mr.J.P. Yagnik, APP for the State.

**CORAM :BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED :16th DECEMBER, 2024**

P.C:-

1 On 23/4/2018, the application filed by the applicant for suspension of sentence and for his release on bail came to be rejected with a specific observation that the evidence on record reflect that the present applicant along with accused no.1 had assaulted deceased Prakash with Tommy and iron rod, due to which he sustained bleeding injuries and thereafter he was dragged outside the office.

 Considering the role attributed to the applicant of assaulting Prakash with Tommy and Prakash having sustained eight injuries consistent with the assault by Tommy, the bail was refused.

2 The learned counsel Ms.Payoshi Roy would invite our attention to the order passed in case of co-accused Subhash Shrirang Sawant (IA No. 3790/2024) on 27/9/2024 and she would submit that this was his third Bail Application when the Court appreciated the merits of the case.

 We have gone through the said order and what we find peculiar is, that the Court appreciating the role attributed to the said accused as it was the case of the prosecution that he had assaulted the deceased with fist and kick blows, whereas accused no.1 and 2 had assaulted with Tommy and iron rod which was found to be the cause of death.

No wonder that the application of Subhash Sawant on merit was re-appreciated and he was held entitled to be released on bail. However, when we entertained the application of the applicant for the second time, we cannot arrive at a conclusion different than the one which is recorded when his first application was rejected on 23/4/2018.

3. Reliance upon the decision in case of **Suleman Vs. State of Uttar Pradesh**, (Criminal Appeal No. 491/2022) is of no succor to the case of the applicant as in Omprakash, the Apex Court has clearly ruled that while considering an application u/s.389 for suspension of sentence while the Appeal is pending, the facts and circumstances of each case must be required to be analysed and merely because the accused is incarcerated for long, would not be a ground by itself for securing his release, since the presumption of innocence which was available to the accused, on recording of finding of conviction no longer cease to exist.

In the wake of the above finding having no merit, application is rejected.

Hearing of the Appeal is expedited.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)