

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO.112 OF 2024****IN****CRIMINAL APPEAL NO. 168 OF 2023**

1. Siddhesh Kushalchand Chavan

2. Vaibhav Amarsinha Rajput

... Applicants/Appellants

V/s.

The State of Maharashtra

... Respondent

Mr. Niteen Pradhan a/w Mr. S.D. Khot, Mr. Shambhvi Desai and Mr. Danish Patel for Appellants/Appellants.

Mr. S.V. Gavand, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 24th January 2024.

P.C. :

1) This is an application for suspension of sentence and releasing the Applicants on bail.

2) Applicants are convicted under Section 302 read with Section 34 of Indian Penal Code and sentenced to suffer imprisonment for life by the Additional Sessions Judge, Kolhapur, by its impugned Judgment and Order dated 5th December 2022.

3) Perusal of the impugned Judgment and Order *prima facie* indicates that, the learned trial Court had taken into consideration the statements given by the accused persons in their memorandum of panchnama (recovery panchnama), confessing commission of offence. All

the material witnesses of prosecution have turned hostile.

4) As far as the weapon used in the crime, i.e. knife is concerned, the same is recovered from the Applicant/Accused No.2 from an open space accessible to the public at large.

4.1) Mr. Pradhan, the learned counsel for the Applicants submitted that, at the time of recovery of the said weapon, there were heavy rains and as per the prosecution, the said weapon was concealed in the bushes at open space and despite the fact, the prosecution found bloodstains on it. He strongly criticized the method and manner, in which recovery has been shown by the prosecution at the instance of Applicant No.2, having bloodstains on it on a day of heavy rain fall in the vicinity.

4.2) Learned counsel further submitted that, the conviction of the Applicants is based on confession given by the Applicants in memorandum panchnama under Section 27 of the Evidence Act and there is no legally admissible evidence against the Applicants.

Perusal of the record *prima facie* indicates that, there is substance in the said contention.

5) In view thereof, during the pendency of the Appeal, we are inclined to suspend the substantive sentence imposed upon the Applicants and release them on bail.

5.1) Hence, the following Order.

- (a) During the pendency of present Appeal, Applicants be released on bail in Sessions Case No. 147 of 2020 arising out of CR No.163 of 2019 registered with Kagal Police Station, District Kolhapur on their furnishing PR. bond of Rs.25,000/- each with one or two solvent local sureties in the like amount;
 - (b) After their release from Jail and during the pendency of the present Appeal, the Applicants shall attend Kagal Police Station on every first Monday of the month between 10:00 am and 12:00 noon, initially for a period of one year and thereafter on every first Monday of every third calendar month, i.e. four times in a year between 10:00 am and 12:00 noon;
 - (c) Applicants shall inform their prospective residential address to the trial Court. Applicants shall keep informed the trial Court any change in their residential address and their mobile number, on which they can be contacted.
 - (d) In case of two consecutive defaults in marking presency as directed in para (b) above, the prosecution will be at liberty to file Application(s) for cancellation of bail;
 - (e) Applicants shall make themselves available at the time of final hearing of the Appeal.
- 6) Application is allowed in the aforesaid terms.
- 7) All the concerned to act on the basis of an authenticated copy of this Court.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)