

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

***INTERIM APPLICATION NO. 496 OF 2023
IN
CRIMINAL APPEAL NO. 1409 OF 2023***

Santoshkumar Sambharlal Baiga Applicant
Versus
The State of Maharashtra Respondent

Ms Trupti M. Khamkar, appointed Advocate for the Applicant.

Mr. K. V. Saste, Addl.PP., for the Respondent- State.

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

DATED : 16th APRIL 2024.

P.C.:

1. Heard learned counsel for the parties.
2. The aforesaid appeal is of the year 2023. The aforesaid appeal is tagged alongwith Criminal Appeal No. 1251 of 2022, and hence it is placed before us.
3. By this application, filed through legal aid, the applicant (Original Accused No. 1) seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his

aforesaid appeal.

4. Learned counsel for the applicant seeks bail on the ground of parity. She submits that the role of the applicant is identical to that of co-accused – Ravilal Veglal Agariya, whose sentence has been suspended and who is enlarged on the bail by this court, vide order dated 29th January 2024.

5. Mr. Saste, learned Addl.P.P. does not dispute the fact, that the role of the applicant is similar to that of co-accused – Ravilal.

6. Perused the papers. The applicant alongwith the co-accused has been convicted by the learned Additional Sessions Judge, Raigad-Alibag, vide Judgment and Order dated 13th March 2018 passed in Sessions Case No. 130 of 2013, for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine.

7. Admittedly, the prosecution case rests on circumstantial evidence i.e. of last seen and recovery of clothes, at the instance of

the applicant. As far as last seen evidence is concerned, the prosecution has examined 3 witnesses i.e. PW4- Babalu, PW5- Hemsing and PW6- Umesh. We, whilst suspending the sentence of co-accused- Ravilal and enlarging him on bail have observed, that *prima facie*, there are some discrepancies, as far as last seen evidence is concerned. The role of the applicant *vis-a-vis* last seen is identical to that of co-accused- Ravilal, whose sentence is suspended and who is enlarged on bail. Thus, the only evidence is that of recovery of clothes, at the applicant's instance. The applicant is in custody for about 10 years. The applicant's appeal is not likely to come up for the hearing in the immediate near future.

8. Considering the aforesaid and the long incarceration of the applicant, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his 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.20,000/- with one or two local 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 the 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.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.