

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

***CRIMINAL INTERIM APPLICATION NO. 494 OF 2023
IN
CRIMINAL APPEAL NO.333 OF 2014***

Keharsing Harjindarsing Chudda ... Applicant

Versus

The State of Maharashtra
(At the instance of the Sr.P.I.
Nashik Police Station) ... Respondent

.....
Mr.Niranjan S. Mundargi i/b. Ms.Keral Mehta, Advocate for the
Applicant/Appellant.

Mr.R.M. Pethe, APP for Respondent – State.
.....

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

DATE : 9th JANUARY 2024

P.C. :

Heard the learned counsel for the parties.

2 By this Application, the Applicant seeks suspension of
his sentence and enlargement on bail pending the hearing and
final disposal of the aforesaid Appeal.

3 This is the fourth Bail Application preferred by the Applicant. The applicant's first Bail Application was withdrawn as this Court (Coram : P.V. Hardas and G.S. Kulkarni, JJ.) was not inclined to suspend the applicant's sentence and enlarge him on bail. The said order is dated 31 October 2014. The applicant's subsequent three Bail Applications were for his release on temporary bail, on account of his parents illness. The said applications although rejected, were not on merits. The present application is filed by the Applicant after nine years, seeking suspension of the sentence and enlargement on bail, having regard to his long incarceration.

4 Learned counsel for the Applicant submits that the Applicant is in custody without remission for about 11 years and 8 months. Learned counsel relied on the Judgment of the Apex Court in the case of *Saudan Singh Vs. State of Uttar Pradesh* passed in Criminal Appeal No.308 of 2022 [SLP (Cri.) No.4633/2021], in support of his submission. He submitted that

even otherwise the prosecution has failed to prove the offence under Section 302 of the Indian Penal Code (IPC), in as much as, the prime eye witness i.e. the child of the Applicant has not been examined by the prosecution. He submits that the trial Court while convicting the Applicant has taken into consideration the disclosure made by the Applicant's son to his grandfather i.e. deceased's father, which is clearly inadmissible being hearsay evidence, and, such could not have been relied upon by the learned Judge. He further submits that the Applicant has been acquitted of the offence punishable under Section 304-B of the IPC i.e. dowry death and in these circumstances, the conviction of the Applicant cannot be sustained under Section 498 A of the IPC.

5 Learned APP opposes the Application. He, however, does not dispute the fact that the Applicant is in custody for about 11 years and 8 months.

6 Perused the papers. The prosecution case rests entirely on circumstantial evidence. Admittedly, the Applicant has been acquitted of the offence punishable under Section 304-B of the IPC. It is not in dispute that the prosecution has not examined the Applicant's son an alleged witness to the incident i.e. pushing of his mother by the Applicant. It appears that the learned Judge has whilst convicting the Applicant, has taken into consideration the disclosure made by Applicant's son to the grandfather i.e. the complainant and convicted him on the basis of the said information received. *Prima facie*, the disclosure being hearsay could not have been relied upon by the learned Judge being hearsay. Be that as it may, the Applicant is in custody for about more than 11 and ½ year.

6 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 his 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.25,000/-, with one or two sureties in the like amount;
- (ii) The Applicant shall report to the trial Court, once in four 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.

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

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

MANJUSHA DESHPANDE, J. *REVATI MOHITE DERE, J.*