

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

***INTERIM APPLICATION NO. 614 OF 2021
IN
CRIMINAL APPEAL NO. 624 OF 2018***

Amit Ramchandra Nair Applicant

Versus

The State Of Maharashtra Respondents

Mr. Nitin Gaware Patil i/b Mr. Shailesh Kharat, for the Applicant.

Mrs. P. P. Shinde, A.P.P for the Respondent – State.

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

DATE : 8th FEBRUARY 2024

P.C. :

1. Heard learned Counsel for the parties.
2. By this interim application, applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

3. The applicant *vide* Judgment and Order dated 21st April, 2018, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 410 of 2012, has been convicted for the offences punishable under Sections 302, 364-A, 363, 387 read with Section 120-B of the Indian Penal Code (“IPC”). For the offence under Section 302 of the IPC, the applicant is sentenced to suffer imprisonment for life and to pay fine. All the sentences were directed to be run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. It is the prosecution case, that the applicant alongwith two juveniles, in conflict with law, kidnapped deceased – Shubham on 31st March, 2012, at about 2.00 p.m., and for his release demanded ransom from his parents. It is further, the prosecution case, that after the ransom money was paid, Shubham was done to death by the accused. Two out of three accused were juvenile, and hence they were tried separately by the Juvenile Court. As far as the applicant is concerned, he was tried by the Regular Court, since he

was a major.

5. The circumstances alleged by the prosecution, as against the applicant is recovery of Rs. 5,000/- and clothes, at the instance of the applicant and identification of the applicant by PW-21 and PW-23, as well as identification of the voice of the applicant by PW-8 i.e. by the father of the deceased. As far as recovery of Rs. 5,000/- is concerned, there is nothing to show that the said amount which was recovered at the instance of the applicant, was ransom money.

6. As far as identification of the applicant's voice by the deceased's father is concerned, we *prima-facie* do not find it safe to place implicit reliance on the said evidence. According to PW-8 - father of the deceased, the voice at the time when the money was delivered by him to the applicant, and the voice of the person who made a call to him, was the same. Admittedly, the applicant's face was covered, when the applicant was handed over the ransom money.

7. As far as PW-21 and PW-23 are concerned, both the said

witnesses were following the applicant, who was on a motorcycle, when he went to Kalpana hotel, to the mezzanine floor of the said hotel. Admittedly, nothing has happened in Kalpana Hotel i.e. no conversation has taken place, nor was the deceased's last seen with the applicant, hence this is the only evidence *qua* the applicant.

6. It is not in dispute that the applicant is in custody for about 12 years till date. Considering the evidence as stated 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 the 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.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.