

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

***CRIMINAL INTERIM APPLICATION NO.605 OF 2023
IN
CRIMINAL APPEAL NO.1116 OF 2022***

1) *Sagar Kanhu Khandale; and*
2) *Satish Dattatraya Bathe* ... Applicants
Versus
The State of Maharashtra ...Respondent

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Mr.Dilip Kamath a/w. Ms.Asha Joshi and Ms.Aadnya Bhandari,
Advocate for the Applicants.

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

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

DATE : 5th JANUARY 2024

P.C. :

Heard the learned counsel for the parties.

2 By this Interim Application, the Applicants seek
suspension of their sentence and enlargement on bail pending the
hearing and final disposal of the aforesaid Appeal.

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3 The Applicants *vide* Judgment and order dated 13 March 2020, passed by the learned Additional Sessions Judge, Pune in Atrocity Special Case No.39 of 2014 have been convicted alongwith other co – accused as under:

- for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each, in default to undergo further rigorous imprisonment for six months each;
- for the offence punishable under Section 364 r/w. 34 of the Indian Penal Code to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/- each, in default, to undergo further rigorous imprisonment for three months each;
- for the offence punishable under Section 201 r/w 34 of the Indian Penal Code, to suffer rigorous

imprisonment for three years and to pay fine of Rs.5,000/-, in default, to undergo further rigorous imprisonment for three months each;

- All the substantive sentences were directed to run concurrently.
- The applicants were, however, acquitted of the offences punishable under Section 3(1)(x) a/w. 3(2)(v) of 3(1)(x) r/w. 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 7(1)(d) of the Protection of Civil Rights Act, 37(1)135 of Bombay Police Act

4 Learned counsel for the Applicants seeks suspension of Applicants' sentence and enlargement on bail, essentially on the ground of, long incarceration of the Applicant i.e. 9 years and 10 months in custody without remission and 10 years and 11 months, with remission. 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 their submission.

5 Learned APP does not dispute the fact, that the Applicants are in custody for more than 9 years. She, however, states that there are two witnesses in the case who have last seen the Applicants with the deceased.

6 Perused the papers. Admittedly, the prosecution case rests on the circumstantial evidence. We have *vide* order dated 22 June 2022, passed in Interim Application Nos.2167 of 2021 and 2200 of 2021 suspended the sentence of the co–accused i.e. Applicants therein having regard their role i.e. on merits. As far as the Applicants are concerned, it is not in dispute that the Applicants without remission are in custody for 9 years and 10 months without remission, and, 10 years and 11 months with remission, and, are presently kept in open prison. The Appeal is

of the year 2022. We have Appeals in which accused are in custody from the year 2014 and, as such, it is not possible for us to take the aforesaid Appeal for final disposal out of turn. Even otherwise, there are no extenuating circumstances to deny the Applicants' bail, having regard to the facts of this case, as are required to be considered. Thus, having regard to the decision of the Apex Court decision in *Saudan Singh Vs. State of Uttar Pradesh* (Supra), there is no impediment in allowing the application.

7 Considering the aforesaid, the Application is allowed and the Applicants' sentences are suspended and they are enlarged on bail pending the hearing and final disposal of their Appeal on the following terms and conditions.

:: ORDER ::

- (i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- each, with one solvent surety in the like amount by each of them;

- (ii) The Applicants shall report to the trial Court, once in three months on the day/date specified by the trial Court, till their appeal is finally disposed of;
- (iii) The Applicants shall keep the trial Court informed of their 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.***