

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

**INTERIM APPLICATION NO.1465 OF 2023
IN
CRIMINAL APPEAL NO.749 OF 2018**

Suhas Dashrath Jagtap

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Ms. Vrushali L. Maindad a/w Ms. Shaheen S. Kapadia,
Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHIVKUMAR DIGE, JJ.**

DATE : 16th FEBRUARY, 2024

P.C. :

1. This is an application for the Applicant's release on bail during pendency of Criminal Appeal No.749 of 2018. The Applicant faced trial in Sessions Case No.845 of 2008 before the Additional Sessions Judge, Pune. The learned Judge vide his Judgment and Order dated 05/01/2018 convicted the Applicant for commission of offence punishable u/s 364-A r/w 34 of the

Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.2,000/-.

2. Heard Ms. Vrushali L. Maindad, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The Applicant has preferred the Criminal Appeal No.749 of 2018, which is pending for final disposal. At the first instance, the Applicant had preferred an application for bail during pendency of his Appeal. That application was Criminal Application No.471 of 2018 in Criminal Application No.749 of 2018. That application was rejected by a Division Bench by this Court vide the order dated 19/07/2018. The reason for rejecting the said application was based on the evidence of PW.3 Amit. After that rejection, the Applicant had preferred one more Bail Application vide Interim Application No.228 of 2020 on the ground of illness of his parents. The said application was rejected by another Division Bench on 20/07/2021. The

Applicant again preferred Interim Application No.245 of 2023 in the same Appeal, but it was also not pressed by the learned counsel for the Applicant and it was disposed of vide the order dated 14/02/2023. After that, the Applicant has preferred the present application for his release on bail on merits as well as on the grounds of his health issues.

4. As far as the merits of the matter are concerned, the Division Bench in the order dated 19/07/2018 had considered the evidence and had rejected the Bail Application. But since July 2018 till today, the Appeal is not heard. The Applicant has spent more than 7 years in jail. The Applicant's health condition is not good as contended by learned counsel for the Applicant and also as mentioned in this application.

5. The learned counsel for the Applicant mentions that the Applicant is suffering from throat pain, reduced mouth opening and difficulty in swallowing. According to his family members, he may be suffering from cancer but the medical tests are not being conducted.

6. We have heard learned counsel for the Applicant as well as the learned APP. As far as the merits of the matter are concerned, they are already considered by the earlier Division Bench. The matter pertains to the incident dated 18/07/2008, in which P.W.3 who was about 12 years of age was abducted allegedly by the Applicant and the main accused Sawant. The main accused Sawant is still not arrested after all these years. The evidence of P.W.3 Amit shows that it was the accused Sawant who had called the victim on some pretext to their car and then he was abducted. The Applicant was throughout accompanying the main accused and there are allegations that he had also threatened to cause harm to the father of the abducted child. Therefore, at this stage, on merits there are certain incriminating pieces of evidence against the present Applicant. Therefore, on merits, the Applicant cannot claim to be released on bail. However, he has spent more than 7 years in custody without any likelihood of the Appeal being heard in a near future.

7. In this background, we have seriously considered the medical condition of the Applicant. We had called for the Applicant's medical report. We have perused the medical report dated 12/02/2024 forwarded by the Chief Medical Officer, Yerwada Central Prison, Pune. The local examination showed blackish and white discolouration over bilateral oral buccal mucosa and hard palate leucoplakia lesion under evaluation. The report mentions that the Applicant was last time referred to Sassoon General Hospital on 30/08/2023. His biopsy of left buccal mucosa and hemogram was done there. Report of biopsy was received on 02/09/2023. It did not confirm any conclusion. Therefore, it was advised that deeper tissue biopsy from representative area of pathology should be conducted. The clinical diagnosis was leucoplakia lesion on buccal mucosa under evaluation. He was referred to Sassoon General Hospital for about 9 times for this ailment since 03/11/2021. Every time he was examined and treatment was given on OPD basis. As mentioned earlier, he was referred to Sassoon General Hospital

last time on 30/08/2023. The medical report further mentions that for referring him to Sassoon General Hospital, Pune, requisition for police escort were made for about 14 times since 05/01/2024, but due to unavailability of police escorts, the Medical Officer of Yerwada Prison, could not send him to Sassoon General Hospital for his further investigation and treatment.

8. His present health condition was guarded and was under symptomatic treatment at Prison hospital. It was further mentioned that he would be referred to Sassoon General hospital for repeat biopsy as per unavailability of police escorts.
9. This report clearly mentions some further investigation in the nature of biopsy was required to be performed and yet he was not taken to Sassoon Hospital since 30/08/2023. Thus the Applicant is being superficially treated without proper investigation and without there being any deeper necessary investigation. It is quite clear that the medical treatment is not

proceeding with all the seriousness that his medical condition requires. The authorities have failed to provide proper medical treatment to the Applicant and hence it would not be justified to keep him in prison in this situation. It is quite shocking that since September 2023, till today, no steps were taken to carry out further investigation and to chart out the proper course of treatment for the Applicant. On this ground alone, we are inclined to grant bail to the Applicant, so that at least with the help and care of his family, proper medical treatment can be given to him. Therefore, we are inclined to grant him bail on that ground. Before passing the order of grant of bail, we have considered glaring features revealed in such cases and it is absolutely necessary that some immediate and serious corrective measures are taken.

10. Considering the seriousness of the situation, we had directed the concerned Police Officers and the Jail Superintendent to remain present before us today. Accordingly, Mr. Rohidas Pawar DCP, Head Quarters, Pune City, Mr. Yogesh

More, ACP, Head Quarters, Pune City and Mr. Mangesh Jagtap, Deputy Superintendent, Yerwada Central Prison, Pune, are present before us. Mr. Rohidas Pawar submitted a report before us, which is taken on record. The report mentions the practical difficulties in providing the escort for the Applicant on 13/02/2024, wherein the latest requisition was made to take the prisoner to Sassoon Hospital. There were 59 police personnel available for hospital guard duty and for providing escort to prisoners on 13/02/2024. For that purpose, at least 161 police personnel were required, but they were not available. It is mentioned in the report that their office will take corrective measures to ensure that escorts are provided in emergency medical cases and endeavour will be made to increase the total number of escorts to ensure that police escort for medical treatment is provided at the earliest.

11. The ground realities about availability or rather unavailability of necessary police escorts is quite disturbing like in the present case of the Applicant. There may be many other

prisoners in need of urgent visits to hospitals for urgent medical treatment. But they are not being taken only because of unavailability of sufficient number of escorts. It is our common experience that the prisoners are not produced before the Trial Court on the date fixed for hearing of the trials. That is also causing enormous delays in conducting trial. In short, insufficiency of number of escorts is causing a lot of problems in the administration of criminal justice and for providing basic medical facilities for the prisoners. This is an extremely serious issue, which the authorities will have to address not only on the priority basis, but on the emergency basis. It is also necessary that some responsible officer is made accountable and responsible for providing the adequate escorts in all such cases. Sufficient number of escorts must be available throughout the State, so that these difficulties are not faced by the prisoners, the hospitals and the Trial Courts. The concerned officers will have to give priority to the cases where the prisoners facing medical emergency need to be taken to the hospital immediately.

12. We hope and trust that all these observations and directions are taken seriously and these issues are addressed at the appropriate level.

13. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.749 of 2018, the Applicant is directed to be released on bail on his executing PR bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two sureties in the like amount.
- (ii) The Medical Officer of the Yerwada Central Prison and the concerned Medical Officer of Sassoon Hospital, shall provide copies of the reports of the investigation of his health issues to the family members of the Applicant.
- (iii) A copy of this order shall be sent to Secretary Home Department – Government of

Maharashtra, I.G. Prison, all Commissioners of Police in Maharashtra State, all Superintendents of Police of all the Districts in Maharashtra, all the Principal District Judges in Maharashtra and the Director General of Police - State of Maharashtra.

(iv) The application stands disposed of accordingly.

(SHIVKUMAR DIGE, J.)

(SARANG V. KOTWAL, J.)