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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2277 OF 2023
IN
CRIMINAL APPEAL NO.648 OF 2016**

Farhan Abdul Malik Khot

.... Applicant.

V/s

State of Maharashtra

at the instance of the DCB CID

..... Respondent.

Ms. Rebecca Gonsalvez for the Applicant/Appellant.

Mrs. Aruna S. Pai, Spl. PP. for Respondent-State.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

**SUBMISSIONS HEARD ON : 27/02/2024
ORDER PRONOUNCED ON : 04/03/2024**

P.C.:-

1] By this application, the applicant who is accused No.6 in POTA Special Case No.2 of 2003 seeks suspension of the sentence imposed in the said criminal trial and further prays that he be enlarged on bail pending consideration of the criminal appeal.

2] By the judgment dated 29/03/2016, the applicant came to be convicted for having committed offences under Sections 3(3) and 4(b)

of the Prevention of Terrorism Act, 2002, Section 4(b) and section 5(a) of the Explosive Substances Act, 1908 as well as under Sections 3, 7 and 25(1-A) of the Arms Act, 1959. He was sentenced on 06/04/2016 to suffer rigorous imprisonment for a period of ten years for the offence committed under Sections 3(3) and 4(b) of the Prevention of Terrorism Act, 2002, rigorous imprisonment for a period of five years for the offences committed under section 5(a) of the Explosive Substances Act, 1908 and under Sections 3, 7, 25(1-A) of the Arms Act, 1959. The applicant has undergone these sentences. He has also been imprisoned for life under Section 4(b) of the Explosive Substances Act, 1908. The applicant is presently undergoing this sentence and it is in that backdrop that the present application has been moved.

3] The record indicates that after his conviction, the applicant had moved an application for suspension of the sentence vide Criminal Application No.1140 of 2016. This application was considered and rejected on 21/10/2016. This order was subjected to challenge before the Supreme Court which did not interfere with the order dated 21/10/2016 and dismissed the Criminal Appeal on 15/09/2017. However, for some period of time, the applicant was enlarged on

interim bail in view of contingencies then arising. The applicant surrendered on 15/12/2017 after expiry of the period of grant of interim bail.

The applicant preferred another application for suspension of sentence making various prayers including the prayer for grant of bail. This prayer was rejected on 11/04/2018 in Criminal Application No.266 of 2018. The applicant, however, was enlarged on temporary bail for a short period.

The applicant moved Criminal Application No.1213 of 2018 praying for fixing an early date of hearing of the appeal as well as praying for release on bail. On 02/12/2019, the prayer for release on bail was not pressed.

The applicant then moved Criminal Application (St) No.2888/2020 seeking his enlargement on bail during pendency of the appeal. This application came to be rejected on 23/09/2022. The aforesaid order was challenged before the Supreme Court. On 16/01/2023 the Supreme Court did not interfere with the order passed

by the Division Bench refusing to enlarge the applicant on bail. However, it observed that if a fresh application was filed, the same should be considered on its own merits and in accordance with law. It is in the aforesaid backdrop that the present Interim Application has been moved.

4] Ms. Gonzalez, the learned Counsel for the applicant took us through the paper-book and referred to the material on record to urge that the material collected by the prosecution was insufficient to link the applicant with the preparation and planting of the bombs that resulted in registration of the aforesaid offences. Reference was made to the confessional statements of accused Nos. 8 and 11, statements recorded under Section 27 of the Indian Evidence Act followed by the recoveries which were stated to have been made from different places that were easily accessible and that too after about 12 days from the arrest of the applicant, reports of the Forensic Science Laboratory to urge that presence of TNT was not found in the blast residues. It was submitted that other accused including accused Nos. 3 and 4 had been released on bail. Though the case of the present applicant may not be termed to be identical as that of accused No. 3 and 4, the role

attributed to the applicant was similar to that of the said accused. It was then submitted that the applicant had undergone actual sentence of about more than 15 years as on 31/12/2023 and more than 17 years with remissions. Referring to various orders passed by the Supreme Court including the orders passed in SLP (Crl) No.11554 of 2022, Criminal Appeal No.98 of 2013 and Criminal Appeal No.1367 of 2011, it was submitted that the sentence undergone by the convicts therein ranged from 10 years to 12 years and in such circumstances said convicts had been enlarged on bail. An order was passed by the Home Department on 20/06/2022 not to prematurely release the applicant was also referred to. Though the criminal appeals had been fixed for final hearing, they were not yet heard and hence in these circumstances, it was prayed that during pendency of the appeal, the applicant be enlarged on bail by imposing appropriate conditions.

5] Mrs. Aruna Pai, the learned Special Public Prosecutor for the State opposed the Interim Application and submitted that by the earlier orders dated 21/10/2016 and 23/09/2022 a similar prayer as made in the present application had been considered and rejected. Merely because the applicant had undergone sentence of about 15 years could

not be treated as a relevant consideration for enlarging the applicant on bail only on that count. The sentence imposed on the applicant for his conviction under Section 4(b) of the Explosive Substances Act, 1908 was for life which meant that such sentence would be required to be suffered for the entire life. Reference in that regard was made to the decisions in (2012) 8 SCC 537 (*Sate of Uttar Pradesh vs. Sanjay Kumar*) and (2013) 2 SCC 452 (*Sangeet and Another vs. State of Haryana*). It was further submitted that considering the serious nature of offence that resulted in about 12 deaths and injuries to about 139 persons, the State Government had refused to prematurely release the applicant by its order dated 20/6/2022. It was thus submitted that considering the fact that two earlier applications moved by the applicant for suspension of sentence and enlargement on bail had been unsuccessful and there being no change of circumstances placed for consideration, the present application was liable to be rejected.

6] On hearing the learned Counsel for the parties and after perusing the relevant material to which our attention was invited, we find that the applicant has not made out any case for suspending the sentence imposed upon him and for releasing him on bail during pendency of

the appeal in the light of the serious nature of the crime. The order dated 21/10/2016 rejecting the first application made by the applicant for suspension of the sentence considers similar submissions that have been urged in support of the present application. This Court after considering relevant material has been pleased to observe that re-appreciation of such evidence at the stage of consideration of the application for suspension of sentence was not warranted. Reference has also been made to the reports of the Forensic Science Laboratory and it has been thereafter observed that the discrepancies sought to be pointed out were not so glaring so as to make the recoveries doubtful. The subsequent application making a similar prayer came to be rejected on 23/09/2022. We do not find it necessary to re-consider some what similar grounds with regard to the material on record that was pointed out to urge that the recoveries were doubtful, as the same could not be linked with the applicant in the context of the role attributed to him as well as the findings of the Forensic Science Laboratory. On the basis of the material pointed out, we find that no different conclusion from the one that has been recorded in the order dated 21/10/2016 can be drawn.

7] The learned Special Public Prosecutor is justified in relying upon the decisions in *Sanjay Kumar* (supra) and *Sangeet and Anr* (supra) to contend that since the applicant has been sentenced to suffer life imprisonment, the fact that the applicant has undergone actual imprisonment of 15 years would not be relevant consideration to consider his request only on that count. Moreover, by the order dated 20/06/2022 the Home Department has passed an order declining to release the applicant prematurely as a result of which the aspect of remissions loses its significance.

8] For the aforesaid reasons, we do not find any ground made out to grant the prayers made in the Interim Application. It is accordingly rejected.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]