

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

**CRIMINAL INTERIM APPLICATION NO.2287 OF 2021
WITH
CRIMINAL INTERIM APPLICATION NO.2288 OF 2021
IN
CRIMINAL APPEAL NO.433 OF 2018**

Kantilal Bhikha Patel & Anr.Applicants

V/s.

Union of IndiaRespondent

Mr.Naveen Chomal a/w Mr.Ashish R. Kachole, for the Applicants in both Interim Applications.

Mr.Hiten Venegavkar, (Speacial P.P. for Respondent-Union of India.

Mr.Mayur Sonavane, APP for Respondent-State.

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

DATE : 15th FEBRUARY 2024

P.C:-

. The Applicants had earlier filed Criminal Bail Application No.599 of 2018 for their release on bail during pendency of the Appeal. That Application was rejected vide the order dated 16th July 2018. But at that time, liberty was granted to the Applicants to apply for bail, in the event their Appeal was

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not heard for a period of three years from 16th July 2018. Thereafter, the Applicant approached the Hon'ble Supreme Court challenging that order.

2. The Hon'ble Supreme Court vide the order dated 1st October 2018 passed in SLP (CRL) No.8021 of 2018, dismissed that SLP as withdrawn. Thus the order passed on 16th July 2018 was confirmed. Therefore, the Applicants have the liberty to apply for bail as their appeal was not heard for a period of three years from 16th July 2018, as mentioned in that order. Thereafter, the Applicants preferred another Application for their release on bail vide IA No.440 of 2020 alongwith 442 of 2020. In those Applications, submissions were made that, the learned counsel wanted to file the Applications afresh by pointing out certain events which had occurred in the family of the Applicants. In tune with that prayer, those Applications were withdrawn with liberty to file fresh Applications. Vide the order dated 6th August 2021, the Division bench permitted the Applicants to withdraw those Applications for their release on bail and suspension of sentence and had granted liberty to file fresh Applications.

3. Considering the liberty granted to the Applicants in both these Applications vide both these orders, today we have heard both the parties.

4. The incident had occurred on 25th November 2008. The Applicant No.1 Kantilal was the brother of deceased Uttam. The Applicant No.2 Manoj is Kantilal's son. The relation between the brothers Kantilal and Uttam were not good. There was some dispute about the parking of a car. Somebody had cut the wires of the car belonging to the deceased two to three days prior to the incident. The deceased was upset.

5. On 25th November 2008, the deceased was telling his wife that he would put a fencing around the car, so that it would be safe. The Applicant No.2 Manoj came there, he went inside the room and came out with the knife. He was accompanied by the Applicant No.1-Kantilal. Kantilal assaulted his other brother Manubhai with a knife on his chest. Manoj assaulted Uttam on his chest with a knife. Uttam was dragged in the open space by Manoj. Both the accused then assaulted Uttam's wife and mother. People gathered around the spot. The accused left the place.

Uttam was taken to the hospital, but he was declared dead. The FIR was lodged by Uttam's wife Minaxi and the investigation was carried out. The Applicants were arrested on 25th November 2008. During trial, the prosecution examined nine witnesses including Uttam's wife Minaxi (PW-1), Manubhai (PW-2) and an independent witness Jayantibhai Mittalbhair Patel (PW-6). They have narrated the incident as described above.

6. The learned counsel for the Applicants submitted that, during the same incident, the accused themselves have suffered injuries and therefore PW-1 and PW-2 faced the trial for causing grievous injuries to the accused. Both of them were convicted for the offence punishable under Section 325 of the Indian Penal Code. He submitted that since the prosecution witnesses i.e. PW-1 and PW-2 have not explained the injuries suffered by the accused, reasonable doubt is created against the prosecution story and therefore the Applicants should be released on bail. He submitted that, in any case, the offence could not be that of murder but at the highest, it could be an offence under Section 304 of the IPC. He submitted that the Applicants are

already in custody for around eight years and therefore considering the maximum punishment which is likely to be imposed under Section 304 of I.P.C., their custody during the pendency of the Appeal is not justified. He submitted that, the Appeal is not likely to be heard finally in the near future and therefore in this case, pursuant to the liberty granted earlier the Applicants' bail Applications can be considered .

7. The learned Special PP Mr.Venegavkar, opposed to these submissions. According to him, by the very nature of the incident, the ingredients of the Section 300 punishable under Section 302 of the Indian Penal Code are made out. There are three eye witnesses, their evidence is consistent, and their presence at the spot is also established. Therefore, the Applicants may not be granted bail.

8. In the order dated 16th July 2018 a Division Bench of this Court had observed that, assuming for a moment that the deceased and his family members were the aggressors, at the most, the conviction would be under Section 304(I) or (II) of IPC, if the Applicants are able to establish that they are entitled

for the benefit under Exception (I) or (IV) of Section 300 of the IPC. At the time of the deciding the bail Application in July 2018, the Applicants were behind bars for 1 and ½ years. Therefore, at that stage the Bail was not granted. However, these observations indicate that there was scope for argument that the offence could be a lesser offence; consequently the sentence could also be lesser. Taking into account these observations and the facts of the case, there is a possibility that it could be a lesser offence and therefore since the appeal is not likely to be heard in the near future, at this stage, the Applicants can be granted bail till the decision of the Appeal. The Applicants were on bail during the trial. They have not misused the liberty. Hence, the following order.

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.433 of 2018 the Applicants are directed to be released on bail on their executing PR bond in the sum of Rs.30,000/- each with one or two sureties in the like amount.

(ii) Both the Applications are disposed of.

(SHIVKUMAR DIGE, J.)

(SARANG V. KOTWAL)