

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

**INTERIM APPLICATION NO. 3285 OF 2023
IN
CRIMINAL APPEAL NO. 594 OF 2022**

Vinod Ramniklal Shah	...Applicant
Versus	
The State of Maharashtra	...Respondent

....

Mr. Rahul Arote, Advocate for the Applicant in Interim Application.
Mrs. M.M.Deshmukh, A.P.P. for the Respondent – State.

....

**CORAM : PRAKASH D. NAIK, &
R. N. LADDHA, JJ.**

DATE : 22nd FEBRUARY, 2024.

P.C.:

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.594 of 2022.
2. The applicant has been convicted for offence under Section 302 of IPC vide Judgment and order dated 05.12.2019 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.777 of 2013 and sentenced to suffer imprisonment for life.
3. The case of the prosecution is that on 21.05.2023 there was incident of assault at Ghatkopar. The police reached the spot after receiving the information. The injured was found dead. First

Information Report was lodged by PW-1. The applicant and others assaulted the deceased. The applicant was armed with knife. Role of assaulting deceased by knife is attributed to applicant.

4. The appeal challenging the Judgment of conviction has been admitted by this Court vide order dated 07.07.2022. The applicant preferred application for suspension of sentence and grant of bail viz. Interim Application No.4121 of 2022. Vide order dated 23.01.2023 the application was dismissed as not pressed with observation that the Court was not inclined to grant bail. However liberty was granted to prefer fresh application after nine months as the applicant would be completing ten years in jail.

5. Learned Advocate for the applicant Mr. Arote submits that the applicant is in custody for a period of about ten years. Excluding the period of Covid bail, the applicant is short of 4 months in completing sentence of ten years imprisonment. There are no criminal antecedents against the applicant. The applicant was granted liberty to prefer an application for suspension of sentence after a period of nine months. The appeal is not heard. The prosecution is relying on the evidence of PW-1 (complainant) who has not supported prosecution case. PW-2, PW-12 and PW-14 are eye witnesses to the incident. The statement of PW-14 was

recorded after three months from the date of incident. There are discrepancies in evidence of PW-12 and PW-14. There are no chances of appeal being heard immediately.

6. Mr. Arote has relied upon the decisions of the Apex Court in the case of **Deepak Jaikishan Sharma @ Magic Vs. The State of Maharashtra** dated 9th October 2023 delivered in SLP (CRL.) No.10158 of 2023 and **Suleman Vs. State of Uttar Pradesh**¹ dated 25th March, 2022.

7. Learned A.P.P. submitted that the offence is of serious nature. The applicant is convicted for offence under Section 302 of Indian Penal Code and sentenced to imprisonment for life. There are eye witnesses to the incident. Specific overt act has been attributed to the applicant. The applicant was armed with knife. The deceased was assaulted by giving blows by knife on his person. The deceased has suffered 10 injuries, including stab wounds. The applicant was on Covid bail for ten months which has to be excluded in calculating actual period of imprisonment. The previous application was rejected by this Court.

8. The previous application was not pressed as the Court was not inclined to grant bail by suspending the sentence. However, liberty was granted to move before this Court by preferring an

1 2022 SCC OnLine SC 714

application for suspension and sentence after a period of nine months. Although the application for suspension of sentence was rejected by this Court vide order dated 23.01.2023, the appeal could not be taken up for hearing. The applicant was on Covid bail for a period of 10 months and excluding the said period of covid bail, the incarceration is 04 months short of 10 years. There is no report that applicant has misused the facility of Covid bail. It is apparent that applicant had surrendered to custody after expiry of covid bail. The applicant is not having criminal antecedents.

9. In the case of **Suleman Versus State of Uttar Pradesh** (supra) the apex Court was considering the appeal preferred by the convict challenging order passed by the Allahabad High Court rejecting the application for suspension of sentence. The convict therein was in custody for a period of 12 years of actual incarceration. He was denied bail by the High Court. The appeal was pending since 2012. The apex Court observed that the accused should be released on bail. The order of the High Court was set aside and the appellant was directed to be released on bail. The Court considered the long incarceration in custody for suspending sentence.

10. In the case of **Deepak Jaikishan Sharma @ Magic Vs. The State of Maharashtra** (supra) the convict was in custody for a

period of 10 years. The prosecution contended that there were criminal antecedents. Application for suspension of sentence and grant of bail was rejected by this Court. The order was set aside by apex Court and without going into merits of the case, bail was granted by considering period of incarceration by observing that High Court ought to have granted benefit of suspension of sentence. The objection of antecedents was taken care of by imposing conditions.

11. Considering the fact that the applicant is in custody for substantial period of time as stated above and the factual matrix as indicated above, the sentence of imprisonment can be suspended on certain terms and conditions.

ORDER

- i. Interim Application No.3285 of 2023 is allowed and disposed of;
- ii. During the pendency of Criminal Appeal No.594 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 05.12.2019 passed by the learned Additional Sessions Judge, Greater Bombay in S.C.No.777 of 2013 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

iii. The applicant shall attend Ghatkopar Police Station once in three months on first Saturday of the month between 11.00 a.m. to 1.00 p.m. till final disposal of the appeal.

(R. N. LADDHA, J.)

(PRAKASH D. NAIK, J.)