

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

**INTERIM APPLICATION NO.3296 OF 2023
IN
CRIMINAL APPEAL NO. 291 OF 2023**

1) Riyaz Gayaz Shaikh
2) Mubarak @ Bhaijan Dastagir Pathan .. Applicants
Vs.
State of Maharashtra .. Respondent

Mr. Daulat G. Khamkar for the Applicants.
Mr. J.P. Yagnik, APP for the Respondent-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 23th JANUARY, 2024.

P. C.:-

1) At the outset, Mr.Khamkar, learned Advocate for the Applicants on instructions seeks leave to withdraw the Application of Applicant No.1, with liberty to file a fresh application for bail, if his Appeal is not taken up for hearing within a period of one year from today.

Leave and liberty granted.

2) Application is disposed off as withdrawn with aforesaid liberty qua the Applicant No.1.

3) As far as Applicant No.2 Mubarak @ Bhaijan Dastagir Pathan is

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concerned, record indicates that, since the date of his arrest i.e. 18th March, 2013, he is behind bars and as of today has undergone incarceration of 10 years and 7 months.

4) Mr. Khamkar, learned Advocate for Applicants submitted that, there are no antecedents at the discredit of Applicant No.2.

5) The view expressed by the Hon'ble Supreme Court in the cases of (i) Suleman Vs. The State of Uttar Pradesh, Criminal Appeal No. 491 of 2022 (Arising out of SLP (Crl) No. 1451 of 2022) dated 25th March 2022 and (ii) Dinesh @ Paul Daniel Khajekar Vs. State of Maharashtra & Anr., Criminal Appeal No. 2987 of 2023 (Arising out of S.L.P (Crl.) No. 10320 of 2023) dated 25th September 2023, is squarely applicable to the case of Applicant No.2, as he has already undergone incarceration for more than 10 years. This ground alone is sufficient for suspension of sentence and to release the Applicant No.2 on bail during the pendency of Appeal.

6) Hence, the following Order.

- (i) Applicant No.2 Mubarak @ Bhaijan Dastagir Pathan shall be released on bail in Sessions Case No.577 of 2013 arising out of FIR No.136/2013 registered with Hinjewadi Police Station, District Pune, on his furnishing P.R. bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

- (ii) After his release from Jail and during the pendency of the present Appeal, the Applicant No.2 shall attend Hinjewadi Police Station, District Pune on every first Monday of the month between 10:00 am and 12:00 noon initially for a period of one year.

After end of one year, the Applicant No.2 shall attend Hinjewadi Police Station, District Pune on every first Monday of the every 3rd Month between 10:00 am and 12:00 noon. The Applicant No.2 thus shall attend Hinjewadi Police Station, District Pune, four times in a year during the pendency of the present Appeal.”

- (iii) In case of two consecutive defaults in complying with the aforestated conditions, the prosecution is at liberty to file an application for cancellation of bail.

7) Application is allowed in the aforesaid terms, in respect of Applicant No.2, only.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)