

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

***INTERIM APPLICATION NO.3692 OF 2022
(For Bail)
IN
CRIMINAL APPEAL NO.213 OF 2020***

Shahrukh Mohammad Multani

...Applicant
(Orig. Accused No.3)

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Chetan S. Damre, for the Applicant.

Mr. R. M. Pethe, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 18th JANUARY 2024

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant, vide Judgment and Order dated 30th September 2019, passed by learned Additional Sessions Judge, Niphad in Sessions Case No. 56 of 2017, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for 1 year;
- for the offence punishable under Section 120B of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer further rigorous imprisonment for 1 year;
- for the offence punishable under Section 404 r/w 34 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay fine of Rs.5,000/-, in default, to suffer further rigorous imprisonment for 2 months.

All the aforesaid sentences were directed to run concurrently.

4. Learned Counsel for the applicant seeks bail on the ground of parity. Learned counsel relied on the order dated 25th July 2022 passed by this Court in the Interim Application filed by co-accused – Bashir Harun Ansari. The said order is annexed at Exhibit – A, page 12 of the aforesaid application.

5. Perused the papers. The prosecution case rests on circumstantial evidence. As far as the applicant is concerned, the circumstances alleged as against him are that of last seen; recovery of Rs.9,500/- at his instance and recovery of a wooden stick also at the instance of the applicant. As far as the evidence of last seen is concerned, the prosecution examined 3 witnesses, in support thereof i.e. PW2 – Ramchandra Deore, PW3 – Shabbir Multani and PW4 – Santosh Mali. PW3 – Shabbir turned hostile and as such did not support the prosecution case. As far as PW4 – Santosh is concerned, no Test Identification Parade (TIP), was held. The same was necessary, more particularly, since the applicant was not known to the said witness. As far as PW2 – Ramchandra is concerned, a perusal of

his evidence shows that on 27th April 2017 at about 3:00 p.m. he saw Kalim and deceased together, proceeding on the Luna of Lalkha towards Vaijapur. PW2 has further stated that he had also seen Bashir and Farukh (applicant) on their motorcycle and that they were also going towards Vaijapur. The evidence of last seen, *prima facie*, appears to be shaky. The other evidence, is that of recovery of money of Rs.9,500/-. The said recovery of money cannot be said to be incriminating. The only evidence, is that of recovery of a wooden stick at the instance of the applicant. It appears from the evidence of the panch witness, that the said stick was recovered from an open space. It appears that the applicant is in custody since May 2017 i.e. for more than 6 years.

6. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.