

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

**INTERIM APPLICATION NO. 3702 OF 2023
IN
CRIMINAL APPEAL NO. 1102 OF 2023**

Bhalchandra Haridas Mahale

.... Applicant
(Original accused no.4)

v/s.

The State of Maharashtra and ors.

.... Respondents

Mr. Hrishikesh Mundargi a/w. Ms. Shradha Sawant for the Applicant.
Mrs. A.A. Takalkar, APP for the State.
Mr. R.D. Suryawanshi for the Intervenor.

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

DATED : 12th MARCH, 2024.

P. C. :-

- 1) This is an Application by the original accused no.4 for suspension of sentence and his enlargement on bail.
- 2) By the impugned Judgment and Order dated 08th August, 2023 passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No.90 of 2013, the Applicant along with other three accused persons is convicted for offences punishable under sections 201, 302, 364 read with Section 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life under Section 302 of IPC and for sentences of specific terms under other sections of IPC.
- 3) It is the prosecution case that, the accused persons committed murder of two persons namely Rakesh B. Vishwakarma and Amitchand P. Dhirmalani on 30th December, 2012. The prelude to commit the said crime

occurred on 28th December, 2012. There was an altercation between the Balvindersingh Rathod (A.No.1) with Mr. Dinesh Lehrani (PW-24) as the friends of PW-24, Naresh Rohra and Naresh Chawla created ruckus while drinking liquor in the shop adjacent to the shop of Balvindersingh Rathod (A.No.1). On 29th December, 2012, again there were altercations and the accused no.1 threatened PW-24 and other persons of dire consequences, is the motive propounded by the prosecution behind commission of the present crime. The dead bodies of the said two persons were found in a *nalah* about 5 kilometers away from the shop where the altercations took place on 28th December, 2012. Witness Bharat B. Khare noticed the dead bodies in the *nalah* on 31st December, 2012 and set the criminal law into motion.

4) The circumstances propounded against the Applicant (accused no.4) are that, his name surfaced in the statement of accused no.1, recorded under Section 27 of the Evidence Act as the co-accused and a Honda Activa Scooter which was allegedly used for transportation of injured/deceased to the said *nalah*, was recovered at the instance of the Applicant. As the present case is based on circumstantial evidence, admittedly the motive revolves around Balvindersingh Rathod (A.No.1).

4.1) Even otherwise, admittedly, the Applicant is arrested on 02nd January, 2013 and for last more than 11 years and 02 months, he is in incarceration. In view of the guidelines issued by the Hon'ble Supreme Court in the case of *Saudan Singh Vs. The State of Uttar Pradesh in Criminal Appeal No. 308 of 2022* [*@ SLP (Crl.) No. 4633 of 2021*], dated 25th February 2022

and the view expressed in 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*, the Applicant is entitled to be released on bail during the pendency of Appeal.

5) In view thereof, during the pendency of present Appeal, the substantive sentence imposed upon the Applicant (accused no.4) is suspended and he is released on bail on the following terms and conditions :-

(i) Applicant shall be released on bail in Sessions Case No.90 of 2013 arising out of FIR No.I-194/2013 registered with Ambernath Police Station, Dist. Thane, on his furnishing P.R. bond in the sum 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 shall attend Ambernath Police Station, Dist. Thane on every first Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Ambernath Police Station, Dist. Thane on every 1st Monday of every 3rd Month between 10:00 a.m. and 12:00 noon. The Applicant thus shall attend Ambernath Police Station, Dist. Thane 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 his bail.
 - (iv) Applicant shall inform his prospective residential address to the trial Court. The Applicant shall keep informed the trial Court of any change in his residential address and his mobile number, on which he can be contacted.
 - (v) Applicant shall make himself available at the time of final hearing of the Appeal.
- 6) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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