

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

***INTERIM APPLICATION NO.352 OF 2024
IN
CRIMINAL APPEAL NO.15 OF 2021
WITH
INTERIM APPLICATION NO.2754 OF 2022
IN
CRIMINAL APPEAL NO.15 OF 2021***

Murgesh Pechi Muttu

.... Applicant

Versus

The State of Maharashtra and Anr.

.... Respondents

.....

Mr.Prashant Gurav, Advocate for the Applicant.

Ms.S.S. Kaushik, APP for Respondent – State.

.....

***CORAM : BHARATI DANGRE &
MANJUSA DESHPANDE, JJ.***

DATED : 3rd DECEMBER, 2024.

P.C. :

1. Interim Application No.352 of 2024 is taken out in pending Criminal Appeal No.15 of 2021, is a third application seeking a relief of suspension of sentence and release of the Appellant on bail, is filed under Section 389 of Cr.P.C.

2. On the first occasion i.e. on 8.07.2021, Interim Application No.1167 of 2021, seeking the relief of bail was rejected by recording as under:

Rajeshri Aher

“5. We have considered the evidence for application for Bail. P.W.1, the wife of the Applicant is consistent in her version. The only omission which has been shown is regarding sale of 22 tolas of gold. P.W.1’s version is also corroborated by medical evidence as regard the injuries. P.W.7 has deposed that she saw the Applicant leaving the house at the relevant time, which corroborates the version of P.W.1. The Applicant was not on bail during the trial. Considering these aspects, the application for Bail is rejected.”

3. The second Bail Application (I.A. No.2060 of 2023) came to be rejected on 21.09.2023, by once again appreciating the evidence and recorded as below:

“4. As per the prosecution case on 19 December 2012, the Applicant assaulted his mother-in-law with a blade of scissor causing grievous injuries on hand, forehead, back and left hand. The victim was taken to the hospital and she was declared dead. There are two eye witnesses. The wife of the Applicant, that is, daughter of the deceased and the minor daughter of the Applicant, and the neighbours. As regard the evidence of the Applicant’s wife is concerned, the same has been consistent and there is no reason to disbelieve the same. These aspects have been considered while rejecting the earlier bail application. No ground is made out to take a different view.”

4. The learned counsel for the Applicant is fair in submitting before us that he has not filed an application on merits of the case, but it is on the basis of his long incarceration, which is now at least of 12 years, and he would place reliance upon the

decision of the Apex Court in the case of ***Saudan Singh Vs. State of Uttar Pradesh***¹.

Accepting the aforesaid statement, we are guided by the observations of the Apex Court in paragraph no.33 of the decision in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary and Anr.***², which reads to the following effect:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of [Section 389](#) of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

5. Since on the merits of the case, we cannot arrive at the conclusion different than the one which recorded on the earlier Applications, the long incarceration, definitely cannot be

1 2022 SCC OnLine 697

2 (2023) 6 SCC 123

the only ground to release the Applicant on bail in exercise of our power under Section 389 of Code of Criminal Procedure.

Interim Application is accordingly rejected.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)