

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 668 OF 2024
IN
CRIMINAL APPEAL NO. 881 OF 2018

Maruti Ananda Patil

} ...*Applicant/*

Orig. Accused No.2

: Versus :

State of Maharashtra & Ors.

} ...*Respondents*

Dr. Yug Mohit Chaudhry a/w. *Mr. Anush Shetty, for the Petitioner.*

Mr. Amit A. Palkar, *APP for State.*

CORAM : R.N. LADDHA, &

SANDEEP V. MARNE, JJ.

Dated : 19 SEPTEMBER 2024.

P.C. :

1) This application is filed in Criminal Appeal No.881 of 2018 seeking suspension of execution of Applicant's sentence and for his release on bail during pendency of the Appeal. Applicant is convicted for offences punishable under Section 302 read with Section 149 of Indian Penal Code (IPC) and has been sentenced to undergo life imprisonment by judgment and order dated 21 December 2007 passed by the learned Sessions Judge, Kolhapur in Sessions Case No.

136 of 2012. Criminal Appeal No. 881 of 2018 filed by Applicant has been admitted by this Court by order dated 11 July 2018.

2) Applicant has been arrested on 1 July 2002 and has been in custody since then. The first attempt for securing bail by the Applicant was made by filing Criminal Application No. 1121 of 2018 which was 'not pressed' by the Applicant, when it came up for hearing on 10 January 2020 as the Appeal was to be taken up for final hearing. Accordingly, this Court expedited hearing of the Appeal by directing the same to be placed on final hearing board in the week commencing from 30 March 2020. However, the Appeal could not be taken up for hearing for a considerable period of time. The Applicant then made second attempt for securing bail by filing Interim Application No. 372/2023. However, the said application was again 'not pressed' by him when it came up for hearing on 6 February 2023. However, while disposing off Interim Application No. 372/2023 as 'not pressed', this Court granted liberty to the Applicant to approach afresh in the event of the Appeal not being heard within a period of one year. Since the Appeal has not yet been heard, the Applicant has filed the present Interim Application, once again seeking bail in pursuance of liberty granted by this Court by order dated 6 February 2023.

3) We have heard Dr. Yug Mohit Chaudhry, the learned counsel appearing for the Applicant, who essentially raises following five grounds for seeking Applicant's release on bail :

- (i) that accused no.1 having identical role and who is also convicted by considering identical evidence has been released on bail by this Court vide order dated 4 January 2022. That after his release on bail, Accused No. 1 has passed away;
- (ii) that the Applicant has been incarcerated for period exceeding 10 years and in view of various orders passed by the Apex Court, he deserves to be enlarged on bail;
- (iii) that even if the entire case of the prosecution is accepted, conviction of the Applicant can, at the highest, be secured for offence punishable under section 304(II) of IPC;
- (iv) That there is no likelihood of the present appeal being heard in any near future as this Court is currently hearing Appeals pertaining to the years 2013 and 2014; and
- (v) that Applicant has been released on furlough and parole from on multiple occasions and has returned to custody on time, without any complaint against him in his village.

4) Mr. Palkar, the learned APP has opposed the application submitting that the crime has been committed by the Applicant with predetermined intention and by use of firearm. He has submitted that instead of releasing the Applicant on bail, the Appeal itself can be taken up for hearing, which has already been expedited by this Court by order dated 10 February 2020.

5) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Petitioner has spent total period of more than 12 years in the custody, including remission period. If the period of remission is excluded, he has spent

more than 10 years of actual incarceration. Dr. Chaudhry has relied upon directions issued by the Apex Court in the case of **Suleman vs. The State of Uttar Pradesh**¹ in support of his contention that once the accused is convicted for life and has undergone sentence of 10 years, he is entitled to be released on bail. The Apex Court has held :

“The only issue is whether in a criminal appeal of the year 2012 pending before the High Court of Allahabad where criminal appeals in the normal course are being heard of the 1980s and the appellant having undergone 12 years of actual incarceration is still to be denied bail!

The High Court seems to think so and, to say the least, we completely disagree and are of the view that the bail should have been for the asking and the impugned order is completely unsustainable.”

6) Dr. Chaudhry has also relied upon order of the Apex Court in **Dinesh @ Paul Daniel Khajekar v/s. The State of Maharashtra & Anr.**² in which the Apex Court has enlarged the Appellant therein on bail only on account of his incarceration for a period of more than 11 years. In that order, the Apex Court held :

‘The Appellant has undergone incarceration for a period more than 11 years. In fact, the high court ought to have granted relief under Section 389 of the Code of Criminal Procedure, 1973 to the appellant’

7) Considering the orders passed by the Apex Court in **Sulmean** and **Dinesh @ Paul Daniel Khajekar** (supra) in our view the Appellant deserves to be enlarged on bail pending final disposal of the Criminal Appeal.

1 Cri. Appeal No.491 of 2022 decided on 25 March 2022

2 Cri.Appel No.2987/2023 decided on 25 September 2023

8) There is yet another factor which goes in favour of the Applicant for his enlargement on bail. Accused No.1 (Applicant's father) is also convicted of same offences and has been awarded life imprisonment based on identical evidence. Accused No. 1 is also convicted of offence of murder by use of firearm. The evidence of injured witnesses used for conviction of Appellant and Accused No.1 appear to be similar. This Court has released Accused No.1 Ananda Manku Patil on bail by order dated 4 January 2023 on three factors of (i) his incarceration for period exceeding 10 years, (ii) his age of 73 years and (iii) lack of possibility of hearing of the Appeal in near future. In our view, two out of the three factors are present in case of Applicant as well. He has also spent more than 10 years in custody after excluding the period of remission. It is unlikely that this Court would be able to take up Criminal Appeal for final hearing in immediate future. In that view of the matter, Applicant deserves to be granted bail on the principle of parity.

9) Also of relevance is the fact that Applicant does not have any criminal antecedents. He has been released on furlough and parole on multiple occasions and has always reported back in time without any complaint against him.

10) Considering the above circumstances in our view, the Applicant deserves to be released on bail. We accordingly proceed to pass the following order :

- (i) Applicant be released on bail in Crime No. 84/2012 registered with Kagal Police Station for offenses

punishable under Sections 302, 307, 143, 147, 148, 149, 324, 323, 504 and 506 of IPC and under section 27 of the Arms Act upon furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

- (ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend the concerned Police Station 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 Applicants shall attend the concerned Police Station at interval of three months of every first Monday between 10.00 am and 12.00 noon (i.e. four times in a year).
- (iii) In case of two consecutive defaults in complying with the aforesaid conditions, the Prosecution is at liberty to file an application for cancellation of bail.
- (iv) Applicant shall not issue any threats to the witnesses associated with the case.

11) With the above directions, Interim application stands **allowed and disposed of** in above terms.

[SANDEEP V. MARNE, J.]

[R.N. LADDHA, J.]

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