

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

INTERIM APPLICATION NO.1457 OF 2024

Jitendra Fakirchand Rana @ Chaina Applicant

V/s.

The State of Maharashtra Respondent

**WITH
CRIMINAL APPEAL NO.381 OF 2016**

Sunil Omprakash Both @ Chota Appellant

V/s.

The State of Maharashtra Respondent

**WITH
CRIMINAL APPEAL NO.840 OF 2016**

Deepak Ishwar Omprakash Piwal Appellant

V/s.

The State of Maharashtra Respondent

**WITH
CRIMINAL APPEAL NO.790 OF 2016**

Satish Nafeshing Dulgaj Appellant

V/s.

The State of Maharashtra Respondent

Mr.Sudeep Pasbola, Senior Advocate a/w Mr.Ayush Pasbola,
Mr.Swaraj Sable, Mr.Shivraj Patil (Shirgaonkar) i/b Mr.Rahul Arote,
for the Applicant.

Mr.Arfa Sait, APP, for the Respondent-State.

Mr.Vaibhav Khade, PSI, D.N. Nagar Police Station, Mumbai.

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**CORAM : R.N. LADDHA &
R.M. JOSHI, JJ.**

DATE : 05th SEPTEMBER 2024

P.C:-

. This is successive Application for suspension of substantive sentence and grant of interim bail in connection with the conviction of the Applicant in Sessions Case No.161 of 2012 whereby the Applicant was convicted for the offences punishable under Section 302 of the IPC, and was sentenced to suffer life imprisonment with fine. He was also convicted and subjected to sentence for other offences under Sections 354, 509, 504, 506(II) of the IPC and Section 37(1) read with Section 135(1) of the Bombay Police Act.

2. First Application under Section 389(1) of suspension of sentence and grant of bail bearing No.3795/2022 was heard and decided on merit by this Court (Coram: Nitin W. Sambre & R.N. Laddha, JJ.) by order dated 20th January 2023. The said order was unsuccessfully taken exception before Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.11005 of 2023.

3. The learned counsel for the Applicant drew attention of this Court to facts of the case. According to him Applicant has no other criminal record and in facts of the case he deserve bail. It is his

further contention that the Hon'ble Supreme Court by taking note of the fact that High Court is in the seisin of the Criminal appeal and the Petitioner is already granted prayer for taking up Appeal has shown disinclination to grant bail. However, according to him efforts taken by the Applicant to final hearing of the Appeal, he could not succeed in getting proceedings of Criminal Appeal No.439 of 2016 heard finally. Thus, it is his submission that, since the Applicant has already completed period of 11 years and 7 months imprisonment, it is fit case for grant of bail and suspension of substantive sentence. To support his submission to place reliance on the order of the Hon'ble Supreme Court in case of Special Leave Petition (Criminal) Diary No.22968 of 2020 wherein the Hon'ble Supreme Court has granted prayer of suspension of sentence on account of the fact that, the Petitioner therein has undergone sentence of more than 7 years. Reliance is also placed on judgment of the Division Bench of this Court in Interim Application No.3285 of 2023 in Criminal Appeal No.594 of 2022 to submit that it is a fit case for grant of bail considering the period of incarceration, a reference is also made to the judgment of the Hon'ble Supreme Court in case of *Saudan Singh V/s. State of Uttar Pradesh*¹.

4. The learned APP opposed the Application.

1 2021 SCC Online SC 3259

5. There can be no dispute made with regard to the fact that, the previous Application for suspension of sentence and grant of bail came to be dismissed by this Court on merit. This order was challenged before the Hon'ble Supreme Court, however, the same was not interfered with.

6. Thus, the only submission remains for consideration of this Court made on behalf of the Applicant is that this is a case of incarceration for the period over 10 years. Though the judgment cited (*Supra*) of the Hon'ble Supreme Court as well as this Court support the submission of the counsel for the Applicant, however, it is just and necessary to consider this aspect in view of the order passed by the Hon'ble Supreme Court in the instant case.

7. The relevant paragraph of the order passed by the Hon'ble Supreme Court is reproduced herein below, for ready reference.

“Having considered the circumstances in this case and taking note of the fact that the High Court is in the seisin of the criminal appeal and the petitioner is already granted the liberty to renew his prayer for taking up the pending appeal, we are disinclined to grant bail to the convicted petitioner notwithstanding the incarceration for over ten years. It is ordered accordingly.”

8. It is thus clear from the afore stated observations made by the Hon'ble Supreme Court that, the said Court has

duly taken into account the fact that the convicted Petitioner has suffered incarceration for over period of 10 years. It is however, specifically observed by the Hon'ble Supreme Court that the Court is disinclined to grant the bail to the convicted Petitioner notwithstanding his incarceration for over 10 years. In view of this order, question of grant of bail for incarceration for the period over 10 years does not arise. Passing any such order would be contrary to the order passed by Hon'ble Supreme Court. Having regard to the afore stated facts and more particularly order passed by the Hon'ble Supreme Court in the very same proceedings, we are not inclined to consider the request made by the Applicant for suspension of sentence of grant of bail. In the result Application stands rejected.

9. Needless to say that Applicant has liberty to revive his request for early/expeditious hearing of the Appeal.

(R.M. JOSHI, J.)

(R.N. LADDHA, J.)