

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1471 OF 2024
IN
CRIMINAL APPEAL NO. 1102 OF 2023

Raina Asaraf Khan .. Applicant
Versus
State Of Maharashtra And Ors. .. Respondents

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Mr. Hrishikesh Mundargi i/b Ms. Shradha Sawant, for the Applicant.

Dr. Ashvini A. Takalkar, A.P.P. for the State/Respondent.

Mr. R. D. Suryawanshi, for the Intervenor.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd AUGUST, 2024

P.C:-

1. The present Application is filed by the Applicant, who is tried as accused No.3 by the Additional Sessions Judge, Kalyan, in Sessions Case No. 90 of 2013 alongwith three other accused persons and on conclusion of the trial, he was found guilty of committing offence punishable under Sections 302, 364, 201 read with Section 34 of the Indian Penal Code ("IPC"). Alongwith the co-accused, he is sentenced to undergo rigorous imprisonment for life and to pay fine. Separate

sentences are imposed on his conviction under the other Sections, all the sentences having been directed to run concurrently.

The impugned Judgment dated 08.08.2023 is assailed in an Appeal filed by the Appellant being numbered as Criminal Appeal No. 1102 of 2023 and the Appeal is already admitted on 17.10.2023.

In pending Appeal, the Interim Application is taken out by the Applicant under Section 389 of the Cr.P.C., seeking suspension of Sentence and for securing his release on bail, pending the hearing of the Criminal Appeal, on such terms and conditions as this Court deem it fit.

2. We have heard learned counsel Mr. Mundargi, appearing for the Applicant and Dr. Takalkar, learned A.P.P. for the State.

Mr. Mundargi has invited our attention to an order passed in case of the co-accused Bhalchandra Haridas Mahale (accused No.4) who has taken out Interim Application No. 3702 of 2023 and by order dated 12.03.2024, he has been directed to be released on bail pending his Appeal, specifically by recording that the case being based on circumstantial evidence, and one of the circumstance of motive clearly revolved only around the accused No.1 Balvindersingh Rathod. In addition, the long incarceration of the Applicant was also considered as one of the ground for releasing him on bail.

3. With the able assistance of the learned counsel

representing the Applicant and the State, we have perused the impugned Judgment and also the evidence which was led before the Sessions Judge, who recorded a finding of guilt and sentenced the accused persons to undergo imprisonment of life.

The star witness according to the prosecution is PW-24, who has referred to be preface of the incident which resulted into the death of Rakesh and Amitchand, who were working with PW-24.

As per the version of PW-24, he was running a shop by name Mahadev Accessories and also running a embroidery factory at Ulhasnagar. He had purchased a shop block of Gaddasingh Rathod i.e. the father of accused No.1 Balvindersingh Rathod, however he could not start embroidery factory at the shop block but he used to meet his friends in the said block.

As per the testimony of PW-24, on 28.12.2012, he was partying with his friends in the said shop block and Balvindersingh entered into the shop alongwith one Deepak and on being questioned as to how he entered the shop belonging to PW-24, it was noticed that his other companions Diljeet, Raina (present Applicant) and Bhalchandra i.e. accused Nos. 2, 3 and 4 were standing outside the shop. Some quarrel occurred between them and PW-24 pacified the accused No.1 by saying that they should not raise quarrel and thereafter all the accused person left the spot.

On 29.12.2012, once again Balvindersingh met him and warned him that his friend Naresh Chawla should not be

seen in the area and he should make him understand. But the quibble did not take any further as PW-24 asked Balvindersingh to forget the incident that had happened.

In the night hours on the very same day i.e. on 29.12.2012, when he was present in the embroidery factory, his two friends Naresh and Sagar came there and they asked him to handover the keys of shop block of Ganesh Nagar, so that they could meet there. Accordingly, the keys were handed over to them and after completing his work he reached the shop block, and he joined his friends who were already parked themselves inside and having drinks. At that moment once again the accused Nos.1 to 3 and 2-3 persons entered the shop and they also joined them in having drinks.

As per PW-24 a quarrel thereafter ensued between the accused No.1 Balvindersingh, accused No.2 Diljit and their companion. In the said quarrel Diljit received injury on head.

Some quibble again occurred as Balvindersingh put the blame upon PW-24 and his friends but this was sorted out.

4. Totally unconnected with this incident, is the event of 30.12.2012 when PW-24 has deposed that he received a phone call from Rakesh Vishwakarma who was working in his factory that he and Amit were returning home.

A phone call was received by him from the brother of Rakesh in the early morning hours that he did not reach home.

The bodies of Rakesh and Amit were traced near the *Nalah* nearing the Railway Station and the accused

persons faced the charge of causing their death by assaulting them by knives and disposing of the bodies with an intention to hide the crime.

5. When we have looked for the material connecting the present Applicant with the death of Rakesh and Amit, even going through the evidence of PW-24, the star witness, he has expressed only doubt on the Applicant, that he has been responsible for the death. The investigation led to the recovery of the weapons at the instance of the accused No.1 and some blood stained clothes from this Applicant but in absence of any analysis, to establish that the clothes were stained with the blood of either of deceased person, the recovery by itself is not construed as incriminating. In addition, the two witnesses relating to the panchanama for recovery of clothes i.e. PW-4 and PW-5 have turned hostile and have not supported the case of the prosecution.

Since, the accused No.4 Bhalchandra is already released on bail with a specific observation in paragraph No.4, which equally apply to the present Applicant, we are inclined to release him on bail by passing of the following order, during the pendency of the Appeal.

ORDRE

- (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, District 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 the Ambernath Police Station, District Thane, on every first Monday of every trimester.
- (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 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. The Interim Application is allowed in the aforesaid terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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signed by
CHAITANYA
ASHOK
JADHAV
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