

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1743 OF 2024
IN
CRIMINAL APPEAL NO. 15 OF 2023

Shankar @ Sukya Hunya Rathod .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Dr. Yug Mohit Chaudhry a/w Anush Shetty for the Applicant.
Ms. M.M Deshmukh, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 11th JULY, 2024

P.C:-

1 The present Interim Application is filed by Shankar @ Sukya Hunya Rathod, accused no.3, who stand convicted in Sessions Case No. 503 of 2014, for committing an offence punishable under Section 302 r/w 34 of IPC and being sentenced to suffer imprisonment for life, along with other two co-accused namely Shankaribai and Shantabai.

Being aggrieved by the judgment on conviction, dated 24/12/2020, he has preferred an appeal (Criminal Appeal No. 15 of 2023), which is admitted on 2/01/2023.

During the pending appeal, he has taken out an Interim Application No. 1743 of 2024, seeking suspension of execution of the sentence imposed upon him and for his release on bail.

2 In consideration of the application filed under Section 389 of CrPC, it is to be kept in mind that there exists a judgment of conviction, erasing the presumption leaning in favour of the accused regarding his innocence and despite the fact that an appeal filed by the convict is likely to take considerable period of time for it being heard finally, it is advisable to consider the application by considering all the relevant factors like the nature of accusations, the manner in which the crime is alleged to have been committed, the gravity of offence, and the desirability of releasing the accused on his conviction etc.

 The Appellate Court while exercising the power is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and for grant of bail.

3 Keeping in mind the aforesaid principles of law, we have considered the case of the prosecution and the evidence placed before the Sessions Court for appreciation in support of the charge framed against the three accused persons for an offence punishable under Section 302 r/w 34 of IPC.

 The prosecution case reveal that one Basu Laxman Rathod (deceased), a labour contract worker was residing with his family members in Banjaratanda, Chembur, Mumbai, and while he was at home, in the evening of 23/02/2014, he received a phone call and he was found talking loudly. Upon enquiry by his daughter, he informed that it was Shankaribai, who had called him and she along with Shantabai were arriving soon.

The deceased thereafter left the home hurriedly and did not return back.

4 A frantic search was carried out for him and a missing report was lodged on 24/02/2014. During the search, the dead body of Basu was found on the terrace of building no.25 in Videocon Colony which was identified by his family members. The head was totally separated from the trunk and the penis and scrotum was cut out. There were multiple injuries over the body and articles like crow bar, wrist-watch, screwdriver, etc were lying on the spot.

The son of the deceased lodged the F.I.R with R.C.F Police Station and offence came to be registered against unknown persons.

On completion of investigation the charge-sheet was filed and all the three accused faced the trial. The prosecution examined witnesses in support of its case and the case purely rest on circumstantial evidence, which include the evidence of last seen witness, in form of Mr. Abdul Kaifi, who saw the deceased in company of accused nos.1 and 2, on 23/02/2014.

5 As far as the present applicant is concerned, who was arraigned as accused no.3, he is arrested on 1/03/2014. The arrest panchnama do not refer to any injury on his body, but after 3 days, an injury is noticed on his palm and this circumstance was connected with the assault on the deceased.

However, Dr. Chaudhry, the counsel for the applicant has taken us to the cross-examination of P.W.18, the P.I. of R.C.F. Police Station, who had arrested the applicant Shankar and send him for

medical examination.

6 P.W. 18 in cross-examination is confronted with the arrest panchanama (Exhibit 110) and he admit that there is no mention of fresh injury on the person of accused. In cross, he did not remember, whether there was mention of injuries on his person in the medical report. Further the witness has admitted as below:-

“ There is no mentioned that accused Shankar was having injury. I have now shown document Exhibit 92. It is correct that whatever injuries are mentioned in Exhibit 92 are not mentioned in arrest form Exhibit 110.”

7 Thus the circumstance of the applicant Shankar sustaining injury on his palm in any case do not connect him to the crime by itself as in the arrest panchanama, there is no mention of any injury and merely because at a subsequent medical examination, the injury is noticed, is not an incriminating circumstance. In addition, the prosecution also relied upon recovery of slippers with blood stains but since this recovery is much after his arrest i.e. on 8/03/2014, it is not safe to rely upon this recovery as P.W. 19 in cross-examination has also admitted that the clothes and chappal are available in the market.

Since, the recovery of chappal also does not constitute as an incriminating circumstance against the accused Shankar, we find that the Sessions Court has failed to consider this aspect in its judgment, while it recorded the finding of guilt. It is necessary for establishing the case based on the circumstantial evidence, that the circumstances should be of such a nature that it should point out to

the guilt of the accused, from which no other inference could be drawn. Since the evidence against the present applicant do not conclusively form part of the chain of circumstances, and there is every chance that the finding by the Sessions Judge may not be sustained, we deem it appropriate to release the applicant on bail, by suspending his sentence.

8 Further, the conviction of the applicant on the basis of his extra judicial confession to P.W. 9 and P.W. 11 is also not reliable since both of them have turned hostile and have not supported the case of the prosecution. In any case, the evidence in form of extra judicial confession is a weak piece of evidence and in absence of any corroboration cannot solely form the basis of conviction.

9 The applicant is in custody for 10 years and though we are not inclined to release him only on the basis of his incarceration for more than 10 years, though reliance is placed by Dr. Chaudhry upon various decisions considering long period of incarceration during pendency of the appeal, it is upon appreciation of the merits of the case of the prosecution and the finding rendered by the trial judge, we are convinced to pass the following order.

ORDER

- (a) Application is allowed.
- (b) The sentence imposed on the Applicant- Shankar @ Sukya Hunya Rathod vide judgment and order dated 4/08/2015, in Sessions Case No. 503 of 2014 is hereby suspended.
- (c) The Applicant, shall be released on bail in

connection with C.R. No. 48/2014 registered with R.C.F Police Station (Sessions Case No. 503/2024) on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(d) The applicant shall mark his attendance on First Monday of every trimester between 5:00 p.m to 6:00 p.m. to the R.C.F Police Station.

(e) On being released on bail, the Applicant shall furnish his contact number and residential address to the Incharge of R.C.F. Police Station and shall keep him updated, in case there is any change.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)