

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

**INTERIM APPLICATION NO. 1893 OF 2024
IN
CRIMINAL APPEAL NO. 398 OF 2019**

Rupesh @ Bhurya Shravan Kakade ... Applicant
Versus
The State Of Maharashtra And Anr. ... Respondents

Mr. Nitin Sejpai a/w Akshata Desai, for the Applicant.

Mrs. P. P. Shinde, APP, for the Respondent No.1 – State.

Mr. Virendra Pethe, for the Respondent No.2.

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 29th JULY, 2024.

P. C. :

Heard learned Counsel for the parties.

2 This is the second bail application preferred by the applicant seeking suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3 The first bail application was withdrawn, as this Court (Coram: Revati Mohite Dere & V. G. Bisht, JJ.) was not inclined to enlarge the applicant on bail. The same is recorded in the order dated 27th June, 2022.

4 The applicant vide judgment and order dated 27th February, 2019, has been convicted and sentenced by the learned Additional Sessions Judge, Raigad-Alibag, for the offences punishable under Sections 302, 397, 201 r/w 34 of the Indian Penal Code ('IPC'). As far as the offence under Section 302 of the IPC is concerned, the applicant has been sentenced to suffer imprisonment for life and to pay a fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for three years.

5 Learned Counsel for the applicant seeks bail on the ground of parity. He submits that the role of co-accused-Shoeb Mehtab Ali is identical to that of the present applicant. He submits that the applicant is incarcerated for more than 11 years and that his appeal is not likely to be heard in the immediate near future.

6 Learned APP does not dispute that the role of applicant is similar to that of co-accused-Shoeb Mehtab Ali. She, however, states that co-accused-Shoeb Mehtab Ali has been granted bail only on the ground of long incarceration.

7 Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears that PW 20 had identified the applicant and co-accused-Shoeb Mehtab Ali in the Test Identification Parade, as some of the assailants. Apart from the said evidence, there is recovery of *Khanjeer* (dagger) at the instance of the applicant, however, the said *Khanjeer* (dagger) is not found to be blood stained. As far as co-accused-Shoeb Mehtab Ali is concerned, he is alleged to have assaulted the accused with a knife and the applicant with a dagger.

8 It is not in dispute that the applicant is in custody for more than 11 years. It is also not in dispute that the co-accused-Shoeb Mehtab Ali, who had undergone more than 10 years and 6 months of incarceration was enlarged on bail by this Court (Coram: A. S. Gadkari & Shyam C. Chandak, JJ.) vide order dated 17th April,

2024, relying on the judgments of the Apex Court in **Saudan Singh Vs. State of Uttar Pradesh¹**, **Suleman Vs. The State of Uttar Pradesh²** etc.

9 Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend Khandeshwar Police Station, District Raigad 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 Applicant shall

1 2022 SCC On Line SC 697

2 2022 SCC On Line SC 714

attend Khandeshwar Police Station, District Raigad on every first Monday of the every 3rd Month between 10:00 am and 12:00 noon. The Applicant thus shall attend Khandeshwar Police Station, District Raigad, four times in a year during the pendency of the present Appeal;

- iii) In case of two consecutive defaults in complying with the aforestated conditions, the prosecution is at liberty to file an application for cancellation of bail;
- iv) Applicant shall inform his prospective residential address to the trial Court. Applicant shall keep informed the trial Court 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.

10 The application is allowed and disposed of in the aforesaid terms.

11 All parties to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.