

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

**INTERIM APPLICATION NO. 1967 OF 2024
IN
CRIMINAL APPEAL NO. 815 OF 2018**

Amitkumar Surendrakumar Jaiswal

Age : 47 Years, Occu. : Advocate/Junior Artist,

R/at : B/201, Navkar Building, Nana Nani

Park, Panvel Pada Road, Virar East,

District : Thane, Permanently residing at:

68A, Phapamau Bazar, Banaras Road,

Allahabad, Uttar Pradesh.

...Applicant/Appellant

Versus

The State of Maharashtra

(At the instance of DCB CID and

Amboli Police Station)

...Respondent

**ALONG WITH
CRIMINAL APPEAL NO. 1144 OF 2018**

Ms. Alveena @ Preeti Surin, D/o. Navin Surin

An Adult, Aged About : 30 Years,

Residing at : B/201, Navkar Bldg., Nana Nani

Park, Manvel Pada Road, Virar East,

District : Thane.

Permanently Residing at:-

Gram Musoormoohu, Post : Ramgad,

Police Station Chayanpur, Daldankar,

State Jharkhand

...Appellant
(Original Accused)

Versus

The State of Maharashtra

(Through DCB CID UNIT-IX,

Mumbai in C.R. No. 56/2012 and Amboli

Police Station, Mumbai in C.R.No.83 of 2012)

...Respondent

Mr.Ashok Mundargi – Senior Counsel a/w Mr.Hrishikesh Mundargi, Ms.Swarali Joglekar, Solicitor – Virendra Pereira, Ms.Aneesha Munshi, Mr.Nitish Menon, Ms.Palak Jain, Ms.Niyati Desondi i/b. Divya Shah Associates:-	Advocates for the Applicant/Appellant.
Mr.H.J.Dedhia:-	APP for Respondent No.1 -State.
Mr.Gitesh Kadam:-	PC–DCB CID Unit–IX, Bandra – Mumbai.

**CORAM : S. M. MODAK &
R. N. LADDHA, JJ.**

DATE : 13th JUNE 2024

P. C. :-

1. Heard learned Senior Advocate Shri.Mundargi for the Appellant and learned APP Shri.Dedhia.
2. The Appellant along with one more Accused are convicted by the Court of Additional Sessions Judge – Greater Mumbai on 11th May

2018 for the offences punishable under Sections 302, 120-B, 364, 201, 387 read with 34 of the Indian Penal Code, 1860 (“IPC”). Both are also convicted for the offence under Section 66-A of the Information Technology Act, 2000. (“IT Act”). He is under arrest from 14th April 2012. During the trial, he was behind bar.

3. It is true that the Appeal preferred by him is pending since 2018. It is also true that this Court has refused to suspend the sentence on merits. It is a matter of record that he has approached the Hon’ble Supreme Court by way of Special Leave Petition (Criminal) Diary No.1928 of 2019. However, the Supreme Court refused to interfere in the order but granted a leave to renew the prayer if the Appeal is not heard within a period of one (1) year. It is a matter of record that he has moved Interim Application No.2531 of 2022. However, the Division Bench of this Court (Coram : Nitin W. Sambre & S. M. Modak, JJ.) was not inclined to grant bail. Hence, the Application was disposed of as withdrawn.

4. Now, the present Application is filed on a new ground, that is the period of ten (10) years already undergone. Already there is a certificate issued by the Superintendent Morshi Open Prison, District : Amravati

that the Appellant has undergone the period of ten 10 years, 6 months and 27 days upto 8th May 2024.

5. Learned Senior Advocate Shri.Mundargi to buttress his submission for grant of bail, relied upon the observations in case of:-

(a) **Saudan Singh v/s. The State of Uttar Pradesh**¹

and

(b) **Suleman v/s. The State of Uttar Pradesh**².

6. He also apprised us about the case only for understanding what are the nature of allegations. It is very well true that we can't go into the merits of the matter. The reason is, it is already considered. The case is based on circumstantial evidence. The allegation is, the Appellant along with Co-accused have kidnapped the deceased Meenakshi Thapa. Initially, missing complaint was filed by the mother of the deceased at Basant Vihar Police Station – Dehradun and it is transferred to the Amboli Police Station. Then they have registered the offence.

7. Both the Accused were found while withdrawing the cash with the help of ATM card belonging to the deceased. That is how, the

1 Special Leave to Appeal (Cri.) No.4633 of 2021 : 5th October 2021 : Supreme Court of India

2 Criminal Appeal No.491 of 2022 : 25th March 2022 : Supreme Court of India

culprit is disclosed. And there are evidence about discovery at their instance including dead body. There are 35 witnesses. Even the relatives of Accused No.2 have also given evidence. Both the Appellants have stayed in a bungalow in which those relatives were working. It is in the state of Uttar Pradesh. The deceased was aspiring to act in the movies whereas, both these Appellants were the coordinators.

8. But, we can't deny the fact that he is behind the bar for the last ten (10) years. Even, the Appeal is pending for the last more than 5 (five) years. The Hon'ble Supreme Court in above two referred judgments, have expressed a view to grant a bail if the Appeal could not be heard for years and if the Appellant is in jail for more than 10 years. Even we have heard learned APP. He is not disputing the period of sentence but only his request is the Appellant ought to have moved for expedite hearing. Be that it may, the Appeal is not heard. Even though, this Special Bench is constituted and even though, we are not dealing with the Appeal as a regular Division Bench, the above facts cannot be disputed. So, the Appellant is entitled for suspension of sentence.

9. Hence, order:-

ORDER

- (i) The sentence of imprisonment as imposed by the Court of Additional Sessions Judge – Greater Mumbai in Sessions Case No.578 of 2012 dated 11th May 2018 is suspended during the pendency of Appeal subject to following conditions:-
- (a) The Appellant is directed to furnish personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or more surety.
- (b) The Appellant to furnish sureties who are having permanent residence in Mumbai.
- (c) The Appellant is directed to give attendance to the Office of DCB CID Unit IX, Mumbai on 1st Monday of every month for a period of one (1) year initially, and then to give attendance once in six (6) months till disposal of the Appeal preferably on first Monday of January and June every year.
- (d) He is directed to inform the Police if there is change in address.
10. In view of the above, Interim Application stands disposed of.

[R. N. LADDHA, J.]

[S. M. MODAK, J.]