

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2021 OF 2024
IN
CRIMINAL APPEAL NO. 1121 OF 2019

Javed @ Jawa Noormohammad Shaikh .. Applicant

Versus

The State Of Maharashtra .. Respondent

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Ms. Shivani Kunder, for the Applicant.

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

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

P.C:-

1. After the Appeal was admitted, the Application is filed by the Applicant seeking his release on bail during the pendency of the Appeal, the learned A.P.P. Dr. Takalkar has invited our attention to the Order passed by this Court on 09.12.2019 in an earlier application (Criminal Application No. 1284 of 2019) filed by the very same Applicant, when this Court rejected the Application with the following observation :

“ 4 In order to prove the case, prosecution has examined twelve witnesses. Out of twelve witnesses, Prosecution Witness Nos. 2 and 4 are

eye witnesses (wife and daughter of the deceased respectively). Both the witnesses deposed that the present applicant and the original accused No.2-Mohammad Akram @ Sheru Mohammad Hanif Shaikh at about 1.30 p.m on 20th January 2014 entered the house of the deceased. They all dragged deceased Mehamood in the passage of staircase. Both the accused dealt blows of knife and sword in their possession on chest, stomach, hands, wrist and back of the deceased.

5. The learned counsel for the applicant invited our attention to the contradictions in the depositions of the above said witnesses. However, at this stage, we cannot appreciate the evidence. That apart, applicant is in custody during the pendency of the trial. In our opinion, no case is made out for grant of bail. Consequently, application is rejected.”

In light of the aforesaid, we cannot come to any conclusion different than the one which is observed.

2. The counsel for the Applicant has placed reliance upon the order passed by the Division Bench on 12.02.2024 in an Interim Application No. 396 of 2023, filed by the co-accused Mohammad Akram @ Sheru Mohammad Hanif Shaikh, where the Division Bench by relying upon the decision of the Hon'ble Apex Court in the case of **Saudan Singh Vs. The State of Uttar Pradesh**, in Criminal Appeal No. 308 of 2022 [@ SLP (Crl.) No. 4633 of 2021], dated 25th February 2022 and **Suleman V/s. The State of Uttar Pradesh**, in Criminal Appeal No. 491 of 2022 (Arising out of SLP (Crl) No.1451 of 2022) dated 25th March

2022, recorded that in the wake of having undergone more than 10 years of the incarceration, the Applicant deserve release on bail.

However, in our view in wake of the subsequent decision of the Hon'ble Apex Court in case of *Omprakash Sahni V/s. Jai Shankar Chaudhary And Anr., reported in (2023) 6 Supreme Court Cases 123 : 2023 SCC OnLine SC 551,* the parameters of consideration under Section 389 have been once again highlighted and therefore the gravity of the accusations and material, on the basis of which the finding of conviction has been rendered, is also directed to be taken into consideration and upon doing so we are not satisfied with the request made in the Application, which is therefore rejected.

Since the R.&P. alongwith the paper book is received, hearing of the Appeal is expedited.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)

CHAITANYA
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