

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

***INTERIM APPLICATION NO.2455 OF 2024
IN
CRIMINAL APPEAL NO.741 OF 2018***

Hemanshu Vasantlal Shah

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Bharat K. Manghani a/w Ms. Deepali Saudagar, for the Applicant.

Ms. Gauri S. Rao, A.P.P for the Respondent-State.

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

DATE : 1st AUGUST 2024

P.C. :

1. Heard learned counsel for the parties.
2. This is the third application preferred by the applicant seeking suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant, vide Judgment and Order dated 28th February 2018, passed by learned Additional Sessions Judge, Bombay

in Sessions Case No. 213 of 2014, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for one year;
- for the offence punishable under Section 392 r/w Section 397 of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/-, in default, to suffer simple imprisonment for five months;
- for the offence punishable under Section 452 of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/-, in default, to suffer simple imprisonment for five months.

All the substantial sentences were directed to run concurrently.

4. Learned counsel for the applicant seeks bail on the ground of long incarceration i.e. incarceration for more than 10 ½ years and also on merits.

5. Learned APP opposes the application.

6. Perused the application. The applicant's first application was withdrawn by the applicant with liberty to file a fresh application, if the appeal is not heard within a period of two years of the said order. Accordingly, the application was disposed of as withdrawn with liberty as prayed. The said order dated 3rd July 2018 passed by this Court is on page 50 of the application. The second application preferred by the applicant was also withdrawn, since the record and proceedings alongwith the paper-book was received by the registry. Liberty was granted to the applicant to pursue his substantive appeal. Accordingly, the second application was also disposed of as withdrawn, with the aforesaid liberty. The said order dated 15th December 2022, passed by this Court is on page 51 of the application. Admittedly, both the applications were not rejected on merits. It is not in dispute that the prosecution case rests entirely on the circumstantial evidence. As far as last seen evidence is concerned, there is no last

seen evidence i.e. the applicant was last seen in the company of the deceased. In fact, it appears that two other persons were in the company of the deceased and were staying in the room at the relevant time, just prior to the incident. Both the said witnesses were not examined, much less their statements were not recorded by the police during investigation. As far as the applicant is concerned, there is a CCTV footage i.e. the applicant was seen in the passage where the room was situated. As far as recovery of knife is concerned, there is discrepancy with respect to finding of blood stains on the same. The panch has identified the knife but has not identified the accused. As far as recovery of money is concerned, i.e. Rs.3,40,000/- is concerned, the panch witness has not been examined. The applicant is in custody for more than 10 ½ years.

7. Having regard to the aforesaid fact and keeping in mind the judgments of the Apex Court in the cases of *Saudan Singh v/s State of Uttar Pradesh*¹, and *Suleman v/s The State of Uttar Pradesh*²,

1 2022 SCC OnLine SC 697

2 2022 SCC OnLine SC 714

the applicant has made out a case for allowing the application. Accordingly, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.