

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3129 OF 2024
IN
CRIMINAL APPEAL NO.954 OF 2022

Jitendra Raosaheb Borse

....Applicant

V/S

The State of Maharashtra & Anr.

....Respondents

Mr. Shubham Sane with Ms. Seema Dighe and Mr. Rajesh Ranglani h/f
Ms. Priyal G. Sarda *for the Applicant.*

Mr. Nitin B. Patil, APP *for Respondent No.1/State.*

None for Respondent No.2.

CORAM: R.N. LADDHA &
SANDEEP V. MARNE, JJ.
DATE : 30 SEPTEMBER 2024.

P.C.:

1. This Application is filed in Criminal Appeal No. 954 of 2022 seeking suspension of execution of Applicant's sentence and for his release on bail during pendency of the Appeal. Applicant is convicted for offences punishable under sections 302, 341 read with section 34 of the Indian Penal Code, 1860 alongwith section 37(1) read with section 135 of the Maharashtra Police Act, 1951 and section 4 (25) of the Arms Act, 1959 and has been sentenced to undergo life imprisonment in addition to payment of fine by judgment and order dated 3 August 2022 passed by Additional Sessions Judge, Pune, in Sessions Case No. 711 of 2012.

2. Criminal Appeal No.954 of 2022 has been admitted by this Court by order dated 11 October 2022. Interim Application No.3192 of 2022 was filed seeking suspension of execution of sentence and for release of the Applicant on bail. However, since this Court was not inclined to grant any relief, the said Application was not pressed by the Applicant. While disposing of the said Application, this Court granted liberty to the Applicant to apply afresh in December 2023. Accordingly, the present Interim Application is filed seeking release of the Applicant on bail.

3. We have heard Mr. Sane, the learned counsel appearing for Applicant and Mr. Patil, the learned APP appearing for Respondent No.1/State.

4. Applicant has been arrested on 18 May 2012 and has been in custody since then. By now, the Applicant has spent more than 10 years in custody, after excluding the period of remissions granted from time to time. Applicant has produced Imprisonment Certificate dated 18 June 2024 issued by Superintendent, Morshi Open Prison, Amravati, certifying that as on 18 June 2024, he had undergone imprisonment for period of 9 years 10 months and 22 days. Therefore, by now the Applicant has undergone custody of 10 years and 2 months. Mr. Sane has relied upon judgments of the Apex Court in ***Saudan Singh vs. State of Uttar Pradesh*** (Criminal Appeal No.308 of 2022, decided on 25 February 2022) and ***Suleman vs. State of Uttar Pradesh*** (Criminal Appeal No.491 of 2022 decided on 25 March 2022). He has accordingly contended that since the Applicant has undergone prolonged incarceration of more than 10 years, he deserves to be released on bail.

5. In *Suleman vs. The State of Uttar Pradesh* (supra) the Apex Court has observed as under:

The only issue is whether in a criminal appeal of the year 2012 pending before the High Court of Allahabad where criminal appeals in the normal course are being heard of the 1980s and the appellant having undergone 12 years of actual incarceration is still to be denied bail!

The High Court seems to think so and, to say the least, we completely disagree and are of the view that the bail should have been for the asking and the impugned order is completely unsustainable.

Considering the orders passed by the Apex Court in *Sulmean* and *Dinesh @ Paul Daniel Khajekar* (supra) in our view the Appellant deserves to be enlarged on bail pending final disposal of the Criminal Appeal.

6. In *Dinesh @ Paul Daniel Khajekar v/s. The State of Maharashtra & Anr.* Cri. Appeal No.2987/2023 decided on 25 September 2023, the Apex Court has enlarged the Appellant therein on bail only on account of his incarceration for a period of more than 11 years. In that order, the Apex court has held as under:

‘The Appellant has undergone incarceration for a period more than 11 years. In fact, the high court ought to have granted relief under Section 389 of the Code of Criminal Procedure, 1973 to the appellant’

7. The Applicant herein is sentenced to undergo life imprisonment and by now, he had completed incarceration in excess of 10 years. The Criminal Appeal is filed in the year 2022 and it is unlikely that the same would be heard by this Court in immediate near future. In that view of the matter Applicant’s incarceration cannot be continued till this Court is in a position to take up the Appeal for decision. Furthermore, period of 1 year and 7 months has elapsed since withdrawal of the previous application on 16 February 2023. Though liberty was granted to the Applicant to apply

afresh in December 2023, the present Application has been filed in the month of August 2024. We also note the Applicant does not have any criminal antecedents.

8. In our view, on twin grounds of Applicant completing incarceration for period in excess of 10 years and non-likelihood of the Appeal being decided in immediate near future, he deserves to be released on bail.

9. We accordingly proceed to pass the following order:

ORDER

- i) Applicant be released on bail and his sentence be suspended till the disposal of the Appeal in Sessions Case No.711 of 2012 on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend the concerned Police Station 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 attend the concerned Police Station at interval of three months of every first Monday between 10.00 am and 12.00 noon (i.e. four times in a year).
- iii) In case of two consecutive defaults in complying with the aforesaid conditions, the Prosecution would be at liberty to file an application for cancellation of bail.
- iv) Applicant shall not issue any threats to the witnesses associated with the case.

10. With the above directions, Interim Application stands **allowed and disposed of** in above terms.

(SANDEEP V. MARNE, J.)

(R.N. LADDHA, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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