

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4144 OF 2024
IN
CRIMINAL APPEAL NO.1102 OF 2023

Diljit Babusingh Labhana .. Applicant
Versus
The State of Maharashtra and ors .. Respondents
WITH
CRIMINAL APPEAL NO.1102 OF 2023

Balvindersingh Balvirsingh Rathod and .. Appellants
ors
Versus
The State of Maharashtra and ors .. Respondents
WITH
INTERIM APPLICATION NO.4357 OF 2023
IN
CRIMINAL APPEAL NO.1102 OF 2023

Dinesh Arjandas Lahrani .. Applicant
Versus
The State of Maharashtra and ors .. Respondents
...

Mr.Hrishikesh Mundargi i/b Shradha Sawant for the Applicant in IA
No.4144 of 2024.
Mr.J.P. Yagnik, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 12th NOVEMBER, 2024

P.C:-

INTERIM APPLICATION NO.4144 OF 2024

1. The applicant stand convicted for offence punishable under Sections 302, 364, 201 r/w 34 of IPC, in Sessions Case No.90 of 2013, he being arraigned as accused no.2.

Upon an appeal being filed by him, the same is admitted.

He has taken out an application seeking suspension of the sentence and his release on bail on the premise that the prosecution has failed to establish his involvement in the offence of murder and the learned Judge, has not appreciated the evidence placed by the prosecution in an appropriate way resulting into a conviction, but being aggrieved by the said judgment and order, and hence he has filed the appeal, which is already admitted.

Claiming parity with co-accused Raina Asaraf Khan and Bhalchandra Haridas Mahale, who have been directed to be released on bail pending the appeal, the applicant seek his release subject to the same stipulations, as according to him, hearing of appeal may consume considerable time.

2. It is the case of the prosecution that the accused persons committed murder of two persons namely Rakesh Vishwakarma and Amitchand Dhirmalani on 30/12/2012.

Prior to this incident, on 28/12/2012, according to the testimony of PW-24, he was partying with his friends in the shop block and Balvindersingh entered into the shop alongwith one Deepak and questioned him as to how he has gained entry into the shop. He is alleged to have been accompanied with Diljit (present applicant) and Raina as well as Bhalchandra, who were standing outside the shop. Thereafter, a tiff ensued, but with intervention of

PW-24, it was pacified by convincing them that they shall not raise quarrel and thereafter, they left the spot.

Immediately on the next date i.e. on 29/12/2012, once again Balvindersingh met PW-24 and warned him that his friend Naresh Chawla should not be in the area, but this incident did not result into any untoward mishap. However, on the night of the very same day, when he was present in his embroidery factory, his two friends Naresh and Sagar came there and asked him to hand over the keys of the shop block, so that they could meet there. Accordingly, he handed over the keys and when he reached the place, the accused nos.1 to 3, accompanied by some two to three persons entered the shop and had drinks. Thereafter, quarrel ensued between Balvindersingh i.e. accused no.1, accused no.2 Diljit and their companion in which Diljit received injury on head.

3. The incident which took place on 30/12/2012, which resulted into registration of an FIR is completely independent as the bodies of the deceased were traced near Nalah nearing the Railway Station and the accused persons are charged for causing their death by assault.

4. While considering the application of Bhalchandra Mahale, (IA No.3702 of 2023 in Criminal Appeal No.1102 of 2023), the Division bench has specifically referred to the incident, which has occurred on 29/12/2012, when some altercation had occurred, when the accused no.1 threatened PW-24 and other persons of dire consequences and this was projected to be the motive by the prosecution for committing the murder of the two persons.

The Division bench did not find this circumstance itself sufficient to conclude their guilt and on the ground that the applicant was arrested in the year 2013 and he had spent more than 11 years and two months of incarceration, he was directed to be released on bail.

5. We had an opportunity to deal with the application of Raina Asaraf Khan, the accused no.3, and we have categorically recorded as under:-

“5. When we have looked for the material connecting the present Applicant with the death of Rakesh and Amit, even going through the evidence of PW-24, the star witness, he has expressed only doubt on the Applicant, that he has been responsible for the death. The investigation led to the recovery of the weapons at the instance of the accused No.1 and some blood stained clothes from this Applicant but in absence of any analysis, to establish that the clothes were stained with the blood of either of deceased person, the recovery by itself is not construed as incriminating. In addition, the two witnesses relating to the panchanama for recovery of clothes i.e. PW-4 and PW-5 have turned hostile and have not supported the case of the prosecution.

Since, the accused No.4 Bhalchandra is already released on bail with a specific observation in paragraph No.4, which equally apply to the present Applicant, we are inclined to release him on bail by passing of the following order, during the pendency of the Appeal.”

6. Mr. Yagnik, the learned APP, do not dispute that the applicant is entitled for parity with Raina Asaraf Khan, who is already directed to be released on bail as the role attributed to them is identical and the material which has been appreciated by the learned Judge in sustaining their conviction and the subsequent imposition of sentence upon them is also based on identical evidence.

In the wake of the above, since the Appeal is filed in the year 2023, and is likely to consume considerable time before it is heard finally and taking a *prima facie* view that the Sessions Judge has failed to appreciate the evidence placed before it in its proper perspective, according to us the applicant is entitled to be released on bail during the pendency of the Appeal.

: ORDER :

- (i) Applicant shall be released on bail in Sessions Case No. 90 of 2013 arising out of FIR No.1-194/2013 registered with Ambernath Police Station, District Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (ii) After his release from jail and during the pendency of the present Appeal, the Applicant shall attend the Ambernath Police Station, District Thane, on every first Monday of every trimester.
- (iii) In case of two consecutive defaults in complying with the aforesaid conditions, the Prosecution is at liberty to file an Application for cancellation of his bail.
- (iv) Applicant shall inform his prospective residential address to the trial Court. The Applicant shall keep informed the trial Court of 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.

6. The Interim Application is allowed in the aforesaid terms.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)