

rajshree

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

**CRIMINAL APPEAL NO.685 OF 2017
ALONGWITH
INTERIM APPLICATION NO.4599 OF 2024
IN
CRIMINAL APPEAL NO.685 OF 2017**

Bhalchandra Baban Bhopi & Ors.] .. Appellants
vs.
State of Maharashtra] .. Respondent

**ALONGWITH
CRIMINAL APPEAL NO.617 OF 2024**

Nitin Vishnu Bhopi] .. Appellant
vs.
State of Maharashtra] .. Respondent

**ALONGWITH
CRIMINAL APPEAL NO.1157 OF 2015**

Janardhan Baban Bhopi] .. Appellant
vs.
State of Maharashtra] .. Respondent

Mr.Sushil Inamdar, for the Applicant.
Ms.Sharmila Kaushik, APP for the State in IA No4599/2024.
Mr.Y.M. Nakhawa, APP for the State in Appeal No.617/2024.
PN V.B. Dhaigude, Kulgaon Police Station, Thane Rural present.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 12th NOVEMBER, 2024.

P.C.

1. Interim Application No.4599/2024 filed by the Applicant seek his release on bail and suspension of the sentence imposed on him vide Judgment and Order dated 07.12.2015 passed by the Additional Sessions Judge, Kalyan in Sessions Case No.111/2012, by which he stand convicted for the offence punishable under Section 302 read with 143, 147, 149 read with 323 of the Indian Penal Code.

On being found guilty of the offence punishable under Section 302 of the IPC, he has been sentenced to suffer imprisonment for life and also levied with fine.

2. The Applicant seek parity with the co-accused Janardan Bhopi and Nitin Bhopi, who have been released on bail by this Court by relying upon the observations of the Apex Court in case of **Saudan Singh vs. State of U.P.** (Criminal Appeal No.308/2022) and **Suleman vs. State of U.P.** (Criminal Appeal No.491/2022), when the Court observed that they have undergone more than 10 years of incarceration.

3. We are not inclined to grant benefit of orders passed in case of co-accused to the present Applicant, as we have perused the material against him, which was placed on record by the prosecution, which has resulted into his conviction and the resultant imposition of sentence and in the wake of the decision of the Apex Court in case of

Omprakash Sahni vs. Jai Sankar Chaudhary & Anr. in Criminal Appeal Nos.1331-1332 of 2023, when the Apex Court has specifically pronounced upon the scope of Section 389 of the Cr.P.C., which relate to suspension of sentence pending the Appeal and for release of the Appellant on bail, it is specifically observed that the principle underlying the theory of criminal jurisprudence, in our country being that an accused is presumed to be innocent till he is held guilty by the Court of competent jurisprudence and once he is held guilty the presumption of innocent gets erased.

While specifically pronouncing upon the scope of the said provision, by exhaustively referring to the law revolving around it, the principle has been laid down, that while exercising power under Section 389 of the Cr.P.C., the Court shall endeavour to see as to whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which, ultimately the convict stands a fair chance of acquittal and if the answer to the above question is in the affirmative, as a necessary corollary, if ultimately the convict appears to be entitled for acquittal, he should not be kept behind bars for a pretty long time till the conclusion of the Appeal, which usually take very long time for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chance of acquittal, what is to be looked into is something palpable, that is something which is apparent or gross in the face of record, on the basis of which the Court can arrive at a prima facie satisfaction that the conviction may not be sustained. It is categorically held that the Appellate Court should not re-appreciate the evidence at the stage of Section 389 and try to pick up few lacunae or loopholes here or there in the case of the prosecution and such an approach has been strongly deprecated.

4. The case of the two co-accused has been dealt by the Court merely by keeping in mind the long period of incarceration, but in the wake of the clear pronouncement of law revolving around Section 389 and on appreciating the material against the present Appellant, since we have noted that the evidence brought on record by prosecution has clearly established that he was a part of the unlawful assembly and he was armed with the chopper. The three eye witnesses to the incident viz. the informant, who himself is an injured and the co-brother of the deceased Devanand Mhaskar, Harishchandra Meher (PW 2) also an injured, as well as PW 3 Jaywant Meher (PW 3) have conclusively established the guilt of the Applicant and the Judgment of conviction is based upon the testimony of the eye witnesses as well as the recovery of the weapon at the instance of the accused and other corroborating evidence.

5. Since the presumption of innocence no longer is available to the Applicant, merely on the ground that he is incarcerated for long period of time, when he has been found guilty of committing double murder and also causing injuries to the two witnesses, we are not inclined to enlarge him on bail by extending benefit of parity of the co-accused.

In the wake of above, Interim Application No.4599/2024 is rejected.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J)