

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

***INTERIM APPLICATION NO.4851 OF 2024
IN
CRIMINAL APPEAL NO.876 OF 2017***

Shashikant Shantaram Tavare

.... Applicant

Versus American Typewriter

The State of Maharashtra

.... Respondent

.....
Iraa Dube Patil, Rishabh Tiwari i/b. Sagar Kasar, Advocate for
the Applicant.

Mr.D.J. Haldankar, APP for Respondent – State.

.....

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

DATED : 3rd DECEMBER, 2024.

P.C. :

1. Interim Application No.4851 is filed under Section 389 of Code of Criminal Procedure seeking suspension of sentence and release of the Applicant on bail on being convicted on 26.09.2024 for offence punishable under Sections 302 and 309 of the Indian Penal Code (IPC) and Section 135 of the Maharashtra Police Act in Sessions Case No.257 of 2016.

2. The Appellant preferred an application i.e. Criminal Application No.1360 of 2017, and this came to be rejected on 13.06.2018, by examining the probability of the Appellant to

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secure an acquittal, and by recording that, *prima facie* the defence of the Appellant did not appear to be plausible, the application came to be rejected.

3. On the second application being filed, the learned counsel for the Applicant, Iraa Dube Patil, has pressed into service the observations of the Apex Court in the case of ***Kashmira Singh Vs. State of Punjab***¹, and she has drawn our attention to paragraphs 2 and 3 of the said decision.

Considering the observations of the Apex Court, that if the Supreme Court is not in a position to hear the Appeal of an accused within a reasonable period of time, it is held that the Court should ordinarily, unless there are cogent reasons for acting otherwise, release the accused on bail in cases where special leave has been granted, as the Supreme Court has granted the leave taking into consideration that he has *prima facie* a good case to consider, and he shall therefore be no longer detained in jail.

4. There can be no quarrel about the proposition that the Appeals filed by the Appellants assailing their conviction have to be decided expeditiously, but there is a fly in the ointment. The High Court is confronted with large number of Appeals which are admitted, and cannot be taken up for hearing due to paucity of time.

5. We feel ourselves guided by the observations of the Hon'ble Apex Court in case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary and Anr.***², which reads to the following effect:

1 (1977) 4 SCC 291

2 (2023) 6 SCC 123

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“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be 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 for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of [Section 389](#) of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

6. Since the earlier Application of the Applicant was rejected, merely because the Appeal has not being taken up for hearing and the Applicant is incarcerated for a long time, by itself will

not be a ground sufficient to secure his release.

However, while we dismiss the Application, we grant liberty to the counsel to mention the Appeal after Christmas Vacation for fixing up a date for final hearing as the record and proceeding is received and the Appeal is ready for hearing.

Interim Application stand disposed off.
American Typewriter

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)