



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4228 OF 2024
IN
CRIMINAL APPEAL NO. 923 OF 2024

Shivaji s/o Kisan Sant
Age : 35 years, Occu : Labourer,
R/o. Watkali, Taluka Sengaon,
District Hingoli.

... Applicant

Versus

1. The State of Maharashtra
Through Police Station Sengaon,
Taluka Sengaon, District Hingoli.
2. Baliram s/o Arjun Devkar,
Age : 31 Years, Occu. Labourer,
R/o. Watkali, Taluka Sengaon,
District Hingoli,
At present residing at Loni,
Taluka Risod, District Washim.

... Respondents

WITH
CRIMINAL APPLICATION NO. 4267 OF 2024
IN
CRIMINAL APPEAL NO. 923 OF 2024

Baliram s/o Arjun Devkar,
Age : 31 Years, Occu. Labourer,
R/o. Watkali, Taluka Sengaon,
District Hingoli,
At present residing at Loni,
Taluka Risod, District Washim.

... Applicant
[Orig. Informant]

Versus

1. Shivaji s/o Kisan Sant
Age : 35 years, Occu : Labourer,
R/o. Watkali, Taluka Sengaon,
District Hingoli.

2. The State of Maharashtra
Through Police Station Officer,
Police Station Sengaon,
Taluka Sengaon, District Hingoli. ... Respondents

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Mr. Dhananjay M. Shinde, Advocate for the Applicant in Cri.Appln/4228/2024 and for Respondent No.1 in Cri.Appln/4267/2024.

Mr. N. D. Batule, APP for Respondent-State in both Applications.

Mr. Swapnil S. Rathi, Advocate for Respondent No.2 in Cri.Appln/4228/2024 and for the Applicant in Cri.Appln/4267/2024.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20.01.2025

Pronounced on : 22.01.2025

ORDER :

1. Criminal Application No. 4267 of 2024 is filed by the informant seeking permission to assist APP during proceedings of the Criminal Appeal. For the reasons mentioned the application, the applicant informant is permitted to assist APP. Criminal Application No. 4267 of 2024 is accordingly disposed off.

2. Criminal Application No. 4228 of 2024 is at the instance of convict for grant of bail during pendency of above appeal arising out of judgment and order of conviction dated 23.09.2024 passed by learned Additional Sessions Judge-2, Hingoli in Sessions Trial No. 114 of 2019.

3. Learned counsel pointed out that applicant was tried vide above Sessions Trial and he has been held guilty and sentenced to suffer imprisonment for seven years, i.e. for offence under Section 304 Part II of IPC. He further pointed out that as on today, applicant is behind bars for more than five years and he has thereby suffered more than half of the sentence. Learned counsel submitted that in fact, deceased had died in a road traffic accident, however different colour has been given to the occurrence to show that due to previous enmity, deceased was deliberately given dash by tipper vehicle and done to death. That, false and afterthought report is lodged by projecting that deliberately deceased was run over but there is no concrete evidence to that extent. There are allegations that incident was in the backdrop of previous quarrel and threats, but the same were of 2017. There was no contact between applicant and complainant's party till the road traffic accident took place. Thus, according to him, findings recorded by learned trial court about commission of culpable homicide not amount to murder have no foundation and are thus taken exception to. That, appeal is of the year 2024 and there being no immediate prospects of hearing, learned counsel prays for bail.

4. Both, learned APP as well as learned counsel for informant, strongly resisted on the ground that there is ample and overwhelming evidence that deliberately dash was given to the deceased riding motorcycle. That, even after dash, vehicle was taken in reverse direction and deceased was run over by crushing him beneath the vehicle. It is pointed out that deceased was accompanied by his brother who had eye witnessed the above act of accused. Thus, according to both of them, it is not an accident and is rather murder and for above reasons, they both oppose the relief as prayed.

5. On hearing both sides and after going through the papers, it emerges that present applicant has been chargesheeted by Sengon Police Station on crime being registered against him bearing no. 73/2019 for offence under Sections 302, 307 and 427 of IPC. Trial seems to have been conducted by learned Additional Sessions Judge, Hingoli, who, on appreciating evidence of in all 11 witnesses including medical experts, recorded conviction for offence under Sections 304 Part II and 427 of IPC vide judgment and order dated 23.09.2024. The same is now challenged by filing appeal and in said appeal, instant application is pressed into service, i.e. for suspension of sentence and grant of bail.

6. It is submitted that applicant was never set at liberty during entire trial and he has been tried as under-trial prisoner. Appellant is said to be behind bars since registration of offence i.e. from 12.05.2019. Judgment of conviction is rendered on 23.09.2024. Appeal against the same is preferred and is apparently of the year 2024. On one hand, applicant claims that death was due to road traffic accident. On the other hand, prosecution claims it to be otherwise and case set up by prosecution in trial court was of murder by being hit and run over by use of vehicle. Trial court has accepted prosecution case and has recorded guilt for offence under Sections 304 Part-II and 427 of IPC. Sentence awarded is of seven years imprisonment and to pay fine. Applicant is said to be behind bars since five years and some months. Considering the nature of allegations and on going through the papers, *prima facie* this Court is not in favour of granting relief as prayed. However, as apparently applicant is behind bars since more than half of the sentence awarded, and appeal being recent one, in stead of granting bail, if the appellant so desires, the appeal itself can be taken up for final hearing. For above reasons, application is dismissed.

[ABHAY S. WAGHWASE, J.]