

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

Interim Application No.511 of 2025

In

Criminal Appeal No.1082 of 2023

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Avinash s/o Bajarang Mothe
Original Accused No.3
Age 22 years, Occ: Labour,
r/o Indiranagar, near Jaibhim Katta,
Kolhapur.
(at present in Kolhapur jail)

... Applicant

Vs.

The State of Maharashtra
Copy to be served on Govt Pleader
Bombay High Court

... Respondents

With

Interim Application No.3529 of 2023

In

Criminal Appeal No.1082 of 2023

Santosh s/o Dnyanoba More
(in jail), Original Accused No.7
Age : 32 yrs, Occ: Agriculture
r/o Yamainagar, Dighanchi,
Tal.Atpadi, Dist.Sangli

... Applicant

Vs.

The State of Maharashtra
Copy to be served on Govt Pleader
Bombay High Court

... Respondents

With

Interim Application No.1226 of 2024

In

Criminal Appeal No.1082 of 2023

Laxman s/o Ankush Pawar

(in jail) Original accused No.1,
Age : 30 yrs, Occ: Agriculture/
driver, R/o Khatke Vasti
Lingiware, Tal.Atapadi, Dist. Sangli

... Applicant

Vs.

The State of Maharashtra
Copy to be served on Govt Pleader
Bombay High Court

... Respondents

**With
Interim Application No.698 of 2024
In
Criminal Appeal No.1202 of 2023**

Akshay Laxman Mohite
Age : 26 yrs, Occ: driver,
R/o Ambedkar Nagar
Tal.Hatkanangale, Dist-Kolhapur.
(presently lodged at Kolhapur
District Prison, Kolhapur)

... Applicant

Vs.

The State of Maharashtra
(At the instance of Rajarampuri
police station, Dist. Kolhapur

... Respondent

**With
Interim Application No.697 of 2024
In
Criminal Appeal No.1213 of 2023**

Indrajit Bapu Desai
Age: 22 yrs, Occ: driver,
R/o in front of Ashta Hospital
Tal. Hatkanangale, Dist.Kolhapur
(Presently lodged at Kolhapur
District Prison, Kolhapur)

... Applicant

Vs.

The State of Maharashtra

(At the instance of Rajarampuri
police station, Dist. Kolhapur

... Respondent

With
Interim Application No.699 of 2024
In
Criminal Appeal No.1218 of 2023

Gundaji Tanaji Namdiwale
Age: 26 yrs, Occ: Laborers
R/o Tamdalge, Tal. Shirol,
Dist.Kolhapur,
(Presently lodged at Kolhapur
District Prison, Kolhapur)

... Applicant

Vs.

The State of Maharashtra
(At the instance of Rajarampuri
police station, Dist. Kolhapur

... Respondent

With
Interim Application No.726 of 2024
In
Criminal Appeal No.1227 of 2023

Raju @ Zumarya Baliram Kadam
Age : 25 yrs, Occ: driver
r/o Yamainagar, Dinghanchi
Tal.Aatpadi, Dist.Sangli
(Presently lodged at Kolhapur
District Prison, Kolhapur)

... Applicant

Vs.

The State of Maharashtra
(At the instance of Rajarampuri
police station, Dist. Kolhapur

... Respondent

Mr Rupesh Jaiswal for the applicants in IA/511/2025,
IA/3529/2023 and IA/1226/2024 and for appellants in appeal

No.1082/2023.

Mr Ramnik Pawar, Advocate a/w Samiksha Pawar, Ms Trupti Jambulkar, Ms Dhanashree Jagdale, Mr Samadhan Mahamulkar, Shubhangi Kadam and Mr Pankaj Mule for the applicants in IA/698/24, IA/697/24, IA/699/24 and IA/726/24 and for appellant in Appeal Nos.1202/23, 1218/23, 1227/23 and 1218/23.

Ms Manisha R Tidke, APP for respondent/State.

Coram: R.N.Laddha, J.
Date: 27 February 2025.

P.C. :

The applicants (accused Nos.1 to 7) faced trial in Sessions Case No.259 of 2019 before the Court of Additional Sessions Judge, Kolhapur, for the offences punishable under Sections 395, 364A, 341, 427 and 120B of the Indian Penal Code ('IPC'). By a judgment and order dated 29 August 2023, the applicants were convicted and sentenced as follows: rigorous imprisonment for ten years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 395 and 364 of the IPC, rigorous imprisonment for ten years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 364 of the IPC, simple imprisonment for one month and a fine of Rs.500/- (with default stipulations) for the offence punishable under Section 341 of the IPC, simple imprisonment for two years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 427 of the IPC, and rigorous

imprisonment for two years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 120B of the IPC. These sentences were to run concurrently.

2. Aggrieved, the applicants preferred appeals before this Court and, by these applications, the applicants seek suspension of the sentence and release on bail.

3. The learned Counsel appearing on behalf of the applicants submit that the amount and gold involved in the crime have already been recovered. The applicants were arrested in June/ July 2019 and have been languishing in jail since then. The learned Counsel further submit that no one was injured in the alleged incident. The test identification parade ('TI Parade') was conducted more than 75 days after the alleged incident, and before conducting the TI Parade, the photographs of the accused were shown to the witnesses. The statement of the eyewitnesses under Section 161 of the Code of Criminal Procedure, 1973, were recorded belatedly. Moreover, the statement of the owner of the allegedly stolen property (PW-2/ the complainant) was also recorded belatedly. The story of additional gold and cash surfaced for the first time on 20 June 2019, whereas the alleged offence occurred on 14 June 2019. The recovered gold was not shown to the witnesses while recording their evidence. The panch witnesses signed an already typed recovery panchanama. There was a delay of 60 days in

recording the statement of PW-15. Furthermore, one of the alleged eyewitnesses did not support the prosecution's case. The complainant (PW-2) failed to identify the applicants in Court and admitted that the photographs of the applicants were shown to him before the TI Parade. The learned Counsel also submit that the prosecution's case is that the complainant purchased gold from M/s Deepak Gold Corporation and M/s Ashapura Gold Corporation, but no one was examined on behalf of these firms.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing the respondent/State, opposing the applicants' request, refers to the seriousness of the charge on which the applicants have been convicted. She argues that the evidence on record strongly supports the prosecution's case and does not justify the granting of bail. According to the learned APP, the gold ornaments and cash were recovered at the applicants' behest, and they were identified in the TI Parade. Furthermore, accused Nos.3, 4, 5 and 7 have criminal antecedents.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. In *Bhagwan Rama Shinde Gosai v. State of Gujarat*¹, the

1. (1999) 4 SCC 421

Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

7. It is undisputed that the TI Parade was conducted more than 75 days after the incident. There is a delay in recording the statements of the witnesses. The narrative of additional gold and cash surfaced for the first time on 20 June 2019, specifically when the owner of the alleged stolen property was present at the police station on the day of lodging the FIR, i.e., on 15 June 2019. The panch witnesses have admitted to signing a typed recovery panchnama. The complainant failed to

identify the applicants in Court, identified the wrong individuals, and admitted that the photographs of the applicants were shown to him before the TI Parade. While this Court acknowledges the arguments presented by the learned APP regarding the seriousness of the offence and the current post-conviction stage of the proceedings, it is essential to recognise that the applicants have already served more than five and a half years out of total sentence of ten years. Furthermore, the appeals were filed in the year 2023 and are unlikely to be heard in near future due to the pendency of the older appeals.

8. In these circumstances, a case is made out for granting the relief of suspension of sentence and releasing the applicants on bail. Hence, the following order:

ORDER

(i) The sentence imposed on the applicants (accused No.1 to 7) by the judgment and order dated 29 August 2023, passed by the Additional Sessions Judge, Kolhapur, in Sessions Case No.259 of 2019, stands suspended during the pendency of the appeals.

(ii) The applicants shall be released on bail upon executing a PR Bond of Rs.25,000/- each and furnishing one or more sureties in

the like amount.

(iii) The applicants shall report to the concerned Police Station on the first and third Sunday of each month until the disposal of the appeals and provide their contact numbers and residential details.

9. The applications stand disposed of accordingly.

[R. N. Laddha, J.]