

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

***INTERIM APPLICATION NO.925 OF 2024
(For Suspension of Sentence)
IN
CRIMINAL APPEAL NO.1276 OF 2023***

Ramesh @ Bhaijan Mohan Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Aniket Vagal a/w Ms. Savvy Kolhekar and Mr. Kunal Pednekar
for the Applicant

Mr. Aashish Satpute A.P.P for the Respondent-State.

***CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.***

DATE : 11th MARCH 2025

P.C. :

1. Heard learned Counsel for the parties.
2. By this interim application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant alongwith other co-accused, vide Judgment and Order dated 30th April 2022, passed by the learned Additional

Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Goregaon, Mumbai, in Sessions Case No. 12 of 2011, has been convicted and sentenced for the offences punishable under Sections 396, 397 and 120B of the Indian Penal Code ('IPC').

4. It appears from the operative part of the order that the applicant alongwith others have not been awarded a separate sentence for the offence punishable under Section 397 of the IPC and each of the accused is sentenced to suffer life imprisonment, which would not be less than sixteen years with fine of Rs.5,000/- each, separately for both the offences punishable under Sections 396 and 120B of the IPC, in default, to suffer imprisonment for six months. It appears that nine accused were arrested in connection with the case in question i.e. in connection with C.R. No.212 of 2010, registered with the M.H.B. Colony Police Station, Mumbai. After investigation, charge-sheet was filed against the said accused. After a full-fledged trial, four accused were acquitted of all the offences punishable under Sections 396, 397 and 120B of the IPC and three accused including the applicant were

convicted, as stated aforesaid.

5. Perused the papers. The prosecution case rests essentially on circumstantial evidence. It appears that in the incident that took place i.e. when the idols of Lord Mahavir were stolen and, two security guards were assaulted by the accused. Out of the said two persons, one succumbed to the injuries and the other was injured. As far as the applicant is concerned, it appears that there is recovery of idols, at his instance. It is the applicant's case that the said idols were not shown to the witnesses and hence the fact that the said idols were the same idols, which were stolen, has not been proved by the prosecution. The said argument is disputed by the learned APP. He submits that the photographs of the idols were shown to the witnesses and that they have identified the said photographs. Apart from the aforesaid, it appears that although there is an injured eye-witness who was assaulted by the accused, the said injured eye-witness was not examined by the prosecution. It thus appears that the said eye-witness had identified the applicant in the test identification parade, however,

the said witness has not been examined by the prosecution. It also appears that in order to prove the test identification parade, the Special Metropolitan Magistrate i.e. PW17 was examined by the prosecution. A perusal of the evidence of the said witness shows that he has only deposed what transpired in the test identification parade i.e. that the applicant was identified by one person i.e. the injured eye-witness. The said witness has not attributed any role allegedly given by the said eye-witness in his substantive evidence. Apart from the aforesaid, there is no other evidence *qua* the applicant. The applicant is in custody for more than 14 ½ years without remission.

6. Considering the aforesaid evidence and the long incarceration of the applicant, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two local solvent sureties in the like amount;

- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

7. Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.