

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1326 OF 2024 (FOR BAIL)
IN
CRIMINAL APPEAL NO. 501 OF 2016

Anil @ Babalu Bhairu Jadhav

....*Applicant*

:*Versus*:

The State of Maharashtra

....*Respondent*

Mr. Amin Solkar with Ms. Misbaah Solkar, Mr. Gaurav Shenoy, Ms. Faiza Gawandi and Mr. Umang Shah, for the Applicant.

Mr. T. G. Khan, APP for the Respondent-State.

CORAM : N. R. BORKAR &
SANDEEP V. MARNE, JJ.

Dated : 21 January 2025.

P.C. :

1) The Applicant has filed the present application for suspension of sentence and for releasing him on bail during pendency of Criminal Appeal No.501/2016.

2) The Applicant has been convicted by the Additional Sessions Judge, Kolhapur in Sessions Case No.116/2014 for the offences punishable under Section 302 of the Indian Penal Code and has been directed to suffer imprisonment for life in addition to payment of fine

of Rs. 4,000/- vide judgment and order dated 26 April 2016. The Applicant was arrested on 26 April 2014 and remained in custody till pronouncement of the judgment and order dated 26 April 2016. He has filed the present Criminal Appeal challenging his conviction and sentence. By order dated 12 August 2016, this Court rejected Criminal Application No.916/2016 filed seeking bail. Thereafter, Applicant made second attempt for securing bail by filing Interim Application No.810/2023. By order dated 9 August 2023, this Court directed the said application to be heard alongwith the main Appeal by fixing the same for final hearing on 21 August 2023. The Appeal, however could not be heard and the Applicant pressed Interim Application No.810/2023 for bail. By order dated 16 October 2023, this Court expressed disinclination to release the Applicant on bail and accordingly the Applicant withdrew Interim Application No.810/2023. Liberty was however granted to the Applicant to mention the Appeal for final hearing in the week commencing from 15 January 2024. Since the Appeal could not be taken up for hearing, the Applicant has filed the present Interim Application seeking his release on bail.

3) We have heard Mr. Solkar, the learned counsel appearing for the Applicant and Mr. Khan, the learned APP appearing for Respondent No.1-State.

4) The main ground on which the present Interim Application is filed is incarceration of the Petitioner for a considerable period of time. Mr. Solkar, during the course of his submissions initially sought to suggest that the Petitioner has spent almost 11 years in custody since his arrest on 26 April 2014 and has accordingly relied upon judgment of the Apex Court in Saudan Singh Versus. State of Uttar Pradesh¹. He has

¹ MANU/SC/0645/2022

also relied upon several other orders passed by the Apex Court, as well as by this Court releasing the convicts on bail on the ground of incarceration for period exceeding 10 years. However, after we queried with the learned APP and sought clarification about the exact period of custody undergone by the Applicant after deducting the period of parole/ furlough leave etc. granted to him, he has placed on record the updated details of his custody, which would indicate that the actual incarceration undergone by the Applicant is 8 years, 5 months and 18 days. In that view of the matter, the Applicant does not strictly qualify for release on bail only on account of the period of incarceration exceeding 10 years.

5) However, if the facts and circumstances of the present case are taken into consideration, the crime appears to have been committed by the Applicant by use of an axe. The Applicant belongs to agrarian family and possession of axe is otherwise not unnatural. The conviction is essentially based on evidence of eye-witness, Umaji Gajanan Bharmal (P.W.4). Perusal of the testimony of P.W.4 would indicate that he had visited the Dairy on 25 April 2014 for delivery of milk where deceased-Sandip was also present for similar purpose. P.W.4 has deposed that upon receipt of the phone call, Sandip went aside towards his two wheeler and the Applicant gave him blows with the axe on his head. One of the defences sought to be raised by the Applicant while seeking to discredit the testimony of P.W.4 is his unnatural conduct of not intervening for saving the deceased when the Applicant was allegedly assaulting the deceased. The learned Sessions Judge has however rejected the said defence.

6) The Applicant does not seem to be a hardened criminal as there are no criminal antecedents. By now, he has undergone custody

for 8 years, 5 months and 18 days which in our view is sufficiently long so as to consider his release on bail. During his release for various reason he has always reported back to custody. Thus, in the event of his conviction being upheld, his presence can be secured considering his deep roots in the Society. Though this Court has repeatedly fixed the Appeal for final hearing, the same has not been yet heard. The Appeal is pending for the last 9 long years. There is no possibility of the Appeal being taken up for hearing in immediate near future. Applicant cannot be continued to be incarcerated indefinitely under the hope of the Appeal being taken up for hearing. Also substantial period of time has elapsed since withdrawal of Applicant's previous bail application on 16 October 2023. After withdrawal of the previous bail application, the Applicant has spent 15 more months in custody. In our view, therefore the Applicant deserves to be released on bail by suspending his sentence.

7) We accordingly proceed to pass the following order :

(i) The sentence imposed on the Applicant vide judgment and order dated 26 April 2016 in Sessions Case No.116/2014 is suspended and the Applicant is released on bail in connection with Sessions Case No. 116/2014 on furnishing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like amount.

(ii) After his release from Jail and during the pendency of the present Appeal, the Applicant shall attend the concerned Police Station on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year. After end of one year, the Applicant shall attend the

concerned Police Station at interval of three months on every first Monday between 10.00 am and 12.00 noon (*i.e. four times in a year*).

(iii) In case of two consecutive defaults in complying with the aforesaid conditions, the Prosecution would be at liberty to file an application for cancellation of bail.

8) With the above directions, the Interim Application stands **allowed and disposed of** in the above terms.

[SANDEEP V. MARNE, J.]

[N. R. BORKAR, J.]

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