

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1640 OF 2024

IN

CRIMINAL APPEAL NO. 120 OF 2023

WITH

CRIMINAL APPEAL NO. 120 OF 2023

WITH

INTERIM APPLICATION NO. 3022 OF 2023

IN

CRIMINAL APPEAL NO. 120 OF 2023

Tajuddin Ali Abdul Ajit

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Irfan Unwala with Shaheen Kapadia, for the Applicant.

Mr. K. V. Saste, APP, for the Respondent-State.

CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

DATED: 12th AUGUST, 2025.

PC:-

1. Heard Mr. Irfan Unwala, learned counsel for the Applicant,
and Mr. K. V. Saste, learned APP for the Respondent/State.

2. By the Judgment and Order dated 28th July, 2017 passed by the Court of learned Additional Sessions Judge, Pune in Sessions Case No.389 of 2016, the Applicant herein was convicted under Section 302 of the Indian Penal Code (**IPC**) and sentenced to undergo punishment of life imprisonment for committing the murder of one Suddam Ali. Assailing the Judgment dated 28th July, 2017, the Applicant as Appellant has preferred Criminal Appeal No.120 of 2023 which is listed before this Court. The Interim Application No.1640 of 2024 is filed by the Applicant, who is in jail since 2015, for his release on bail.

3. By referring to the judgment passed by the learned Trial Court, Mr. Irfan Unwala submits that the conviction of the Applicant is based on last seen together circumstance, extra judicial confession and alleged motive of the crime, which circumstances could not be established by the prosecution by adducing cogent evidence. In so far as the recovery of the sickle allegedly on being led by the Applicant under Section 27 of the Evidence Act is concerned, Mr. Irfan Unwala submits that the fact of discovery has also not been established in accordance with law. Mr. Unwala submits that it is a case of no evidence to sustain the conviction. Hence, the application.

4. Mr. K. V. Saste, learned APP on the other hand submits that the weapon, namely, sickle, was recovered on being led by the Applicant. He, however, has submitted in usual fairness that whether the last seen together circumstance has been proved in

accordance with law would call for detail scrutiny by the court at the time of hearing of the appeal.

5. On a cursory reading of the impugned judgment as well as the material on record, we find that the star witness, viz., Ramjan Ali, who had claimed to have seen the accused with the deceased has not been examined as a witness. He is the same person, who had also claimed that the accused had made extra judicial confession before him.

6. Mr. Unwala has pointed out that according to Mr. Ramjan Ali the accused had confessed about his guilt before him at around 2.30 p.m.. However, on the same day Ramjan Ali had told the said fact to others at about 1.00 p.m..

7. Mr. Unwala has also pointed out that the sickle was allegedly recovered after fifteen days and since it is an area where a large number of mutton shops are found and considering the fact that Investigating Officer has stated that he had never gone to the house of the accused where the sickle was found, there is reasonable doubt as to whether, the fact of alleged recovery of weapon has at all been established in accordance with law.

8. Law is well settled that last seen together circumstance and extra judicial confession are weak evidence. It *prima facie* appears that the prosecution could not prove those circumstances in this case by adducing cogent evidence. There is also reasonable doubt

as to the manner in which the weapon (sickle) was recovered by the police. As such, having regard to the over all facts and circumstances of the case, we are of the considered view that the Applicant has made out a strong case for suspension of his jail sentence and for his release on bail.

9. We, accordingly, pass the following order:-

ORDER

i. The Applicant, viz, Tajuddin Ali Abdul Ajit shall be released on bail in connection with C.R.No. 72 of 2015 registered with Vimantal Police Station, District Pune on furnishing PR Bond of sum of Rs.50,000/- with one or two sureties in the like amount, to the satisfaction of the learned Trial Court.

ii. The Applicant shall maintain good behaviour and shall not indulge in any anti social activity while on bail.

iii. The Applicant shall appear before the concerned Police Station on the first Saturday of every month between 3.00 p.m. to 5.00 p.m. until such time, the pending appeal is finally disposed of.

- iv. The Applicant shall not leave the jurisdiction of Pune district without the prior permission of the learned Trial Court.
 - v. The Applicant shall ensure due representation before this Court through his engaged counsel as and when the connected appeal is taken up for final hearing.
7. Before parting with the records, we make it clear that the observations made in this order are tentative in nature and have been made purely for the purpose of disposing of the bail application.
8. Violation of any of the above mentioned conditions shall be viewed seriously.
9. Interim Application No.1640 of 2024 stands disposed of accordingly.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)