

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

**INTERIM APPLICATION NO.2977 OF 2024
IN
CRIMINAL APPEAL NO.758 OF 2018**

Dilip Ashok Jadhav @ D.J. ...Applicant
Vs.
State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.2996 OF 2024
IN
CRIMINAL APPEAL NO.758 OF 2018**

Amol Ashok Jadhav ...Applicant
Vs.
State of Maharashtra ...Respondent

Dr. Yug Mohit Chaudhary a/w Mr. Anush Shetty, for the Applicants.
Ms. Geeta P. Mulekar, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.
DATED : 30th JUNE, 2025**

P.C. :-

1) In both these Applications a common Order is passed today because the subject matter is the same Sessions Case. The Applicant in Interim Application No.2977 of 2024 was the Original Accused No.1 and the Applicant in Interim Application No.2996 of 2024 was the Original Accused No.2 in Sessions Case No.96 of 2013 before the Additional Sessions Judge, Kolhapur. There were three other Accused in that case. The learned Trial Judge *vide* his Judgment and Order dated 23rd April, 2018 convicted all the five Accused for commission of the offence punishable under Section 302

r/w 34 of the I.P.C. and under Section 120-B of I.P.C. All of them were sentenced to suffer Imprisonment for Life and to pay fine of Rs.3,000/- each and in default to suffer R.I. for 6 months.

2) The prosecution case is that, because of previous enmity, on 13th February, 2013 at about 1:30 p.m., both these Applicants came near Axis Bank, New Mahadwar Road, Kolhapur and fired at one Ashok Patil. The Applicant No.1-Dilip Jadhav fired on his face and the Applicant-Amol fired one more bullet at Ashok Patil. There were two entry wounds. The other three Accused came on the spot on two wheelers and threatened both these Applicants and escaped from the spot on those two wheelers. Accused Nos.1 to 4 were arrested on 16th February, 2013. There was a bag in one of the two wheelers which had a firearm. The Ballistic Report shows that, the bullet found at the spot matched with that firearm.

3) Learned counsel for the Applicants submitted that, all the other three Accused are granted bail by different orders passed by different Division Benches of this Court in their separate Appeals. The evidence of recovery of the firearm from the two wheelers is concerning all the four Accused who were arrested together including the present Applicant. Therefore, on the principles of parity, that circumstance cannot be held only against the present Applicants for consideration of their bail. The only distinguishing feature for the present Applicants as per the prosecution case is the evidence of the sole eye witness PW19-Somesh Sathe, where there is a

distinction in the roles played by the Accused. He submitted that the evidence of PW19 shows that he is a wholly unreliable witness and based on his evidence, conviction cannot be based against any of the Accused. He submitted that, the Applicants are in custody since 16th February, 2013 and therefore they be granted bail.

4) Learned APP opposed these submissions. According to her, the description given by the eye witness Somesh Sathe is very clear. Specific role of firing at the deceased-Ashok Patil is specifically attributed to both these Applicants which is a seriously distinguishable incriminating feature against the Applicants compared to the other Applicants. Therefore, bail may not be granted to them.

5) We have considered these submissions.

6) As far as the other three Accused are concerned, they are granted bail by reasoned orders passed by different Division Benches. The Applicant No.5-Mahadev was granted bail vide the Order dated 1st August, 2022 passed in Interim Application No.2324 of 2022 in Criminal Appeal No.758 of 2018. It was specifically observed that, the eye witness PW19 was not sure about the identity of the Accused Nos.3 and 5 as he had mixed up the defect in the eye of one of them. He had attributed that defect to the Accused No.5 when in fact it was the Accused No.3-Harish Patil, who was suffering from that defect. To that extent, PW19-Somesh Sathe was held to have committed mistake about the identity.

7) The Accused No.3-Harish Patil was granted bail *vide* the Order dated 31st January, 2023 passed in Interim Application No.3131 of 2022 in Criminal Appeal No.758 of 2018. It was observed that, there was absence of material to infer the active participation of the Accused No.3-Harish Patil and therefore he was granted bail.

8) The Accused No.4-Omkar Suryavanshi was granted bail *vide* the Order dated 21st July, 2023 passed in Interim Application No.2021 of 2023 in Criminal Appeal No.758 of 2018. Again the role of that Applicant was considered and it was also observed that, the evidence of conspiracy brought forth through the testimony of PW15 was not wholly reliable. On these aspects, he was granted bail.

9) Thus, it can be seen that the only incriminating material that separates all these three Accused who are granted bail and the present Applicants is the roles described in the deposition of PW19-Somesh Sathe. In his Examination-in-chief, he has described that the Applicant-Dilip fired two shots on the face of the deceased-Ashok. After that, the Applicant-Amol also fired at the deceased. Both of them then went away on one Activa and on another motorcycle. This is the description of the incident given by the said witness-Somesh Sathe. His cross-examination is important. He had admitted in his examination-in-chief itself that his statement was recorded after eight days. In the cross-examination, he admitted that till recording of his statement by the police, he had not disclosed to anybody that he had seen

the incident. Importantly he further admitted that, after the incident for about three days, police from CID office, Kolhapur were following him and he was avoiding them. He used to hide himself in the area where he was residing. During those three days, the police used to come to his house. His parents used to ask him why the police were searching for him. But he used to give them evasive answers. Till recording of his statement by the police, he was avoiding them by hiding himself. He has further stated that, there was no other reason for him to fear anybody. He accepted that since he was not responsible for the murder, it was not necessary for him to hide himself. His further cross-examination is even more important. He has stated that, before the day on which his statement was recorded, police came to him and warned him to remain present for the statement and told him that otherwise he and his family would face consequences. After all this, his statement was recorded. From his cross-examination it is quite clear that, he was avoiding to give police statement. He had not told about the incident to anybody. He had no reason to fear the police and ultimately his statement came to be recorded after the police had threatened to take action against him and his family. Thus, it is apparent that he is not a reliable witness and his statement is recorded by the police under some coercion. This is the only main witness against both the Applicants and he does not appear to be a reliable witness. The other incriminating circumstances applied to all other Accused who are granted bail. Therefore, in this background, we are inclined to grant bail to

the present Applicants as well. It is made clear that, all these observations are made only for consideration of these Bail Applications. The conditions imposed on co-accused Omkar Suryavanshi can be imposed on the present Applicants. Hence, the following Order:-

:: ORDER ::

- (i) During pendency and final disposal of Criminal Appeal No.758 of 2018, the Applicants are directed to be released on their executing PR. Bond in the sum of Rs.25,000/- each with one or two sureties each in the like amount.
- (ii) The Applicants shall report to the Trial Court, once in three months on the date specified by the Trial Court, till their Appeals are finally disposed of.
- (iii) The Applicants shall keep the Trial Court informed about their current addresses and mobile numbers. They shall inform the change of residence or mobile phone numbers.
- (iv) If there are two consecutive defaults in appearing before the Trial Court, the learned Trial Judge shall make a report to the High Court and the prosecution would be at liberty to file an Application seeking cancellation of bail.
- (v) The Applications are disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)