

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3233 OF 2024

WITH

INTERIM APPLICATION NO.3234 OF 2024

IN

CRIMINAL APPEAL NO. 956 OF 2024

Vijayan Thevar @ Ramaswami Konar
@ Armogam Konar @ Takala

.....Applicant

IN THE MATTER BETWEEN

Vijayan Thevar @ Ramaswami Konar
@ Armogam Konar @ Takala

....Appellant

Vs.

The State of Maharashtra

....Respondent

Mr. Sujeet Bugade, for Applicant/Appellant.

Mr. V.B. Konde Deshmukh Addl. P.P. for Respondent-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 17th February 2025.

P.C.:-

- 1) Heard learned counsel for the parties.
- 2) By these Interim Applications, the Applicant seeks suspension of his sentence and enlargement on bail pending the

hearing and final disposal of his aforesaid Appeal.

3) The Applicant vide judgment and order dated 7th July 2023 passed by the learned Sessions Judge, Mumbai in Sessions Case No. 483 of 2018 has been convicted for the offences punishable under Sections 302 and 377 of the Indian Penal Code. For the offence punishable under Section 302 of the IPC, the Applicant has been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months. For the offence punishable under Section 377 of the IPC, the Applicant has been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months. Both the said sentences are directed to run concurrently.

4) Perused the papers. The prosecution case rests on circumstantial evidence i.e. essentially on the CCTV footage in which the Applicant is allegedly seen assaulting the deceased with a paver-block. According to the prosecution, the incident of assault by paver-block is captured in the CCTV footage and that P.W.10-Balram Kandhaswami Naidu has identified the Applicant in CCTV footage as being the same person, who assaulted the deceased with a paver-block.

5) Admittedly, no test identification parade of the Applicant was held. It appears that P.W.10 has identified the Applicant based only on his gait i.e. walk. A perusal of the cross-examination of P.W.10 reveals that the said witness has admitted that the person in the video had worn a cap and that his face was not clearly seen. Apart from the said evidence, there is no other evidence to corroborate the evidence of CCTV footage i.e. in which the Applicant is seen assaulting the deceased with paver-block. The Applicant is in custody for more than five years.

6) Considering the aforesaid evidence on record, the Applications are 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.25,000/-, with one or two sureties in the like amount;
- (ii) The Applicant shall report to the trial Court, once in six 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) The Applications are allowed in the aforesaid terms and are accordingly disposed of.

8) All concerned to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)