

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

**INTERIM APPLICATION NO.3362 OF 2024
IN
CRIMINAL APPEAL NO.902 OF 2024**

Sham Brindavan Kaithwas
(UTP)

.....Applicant

Versus

The State of Maharashtra
and another

.... Respondents

Mr. Rahul S. Kurekar, Advocate a/w. Siddhesh Pilankar for
the Applicant.

Ms. Ranjana D. Humane, APP for the Respondent No.1-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JULY, 2025

P.C. :

1. This is an Application for bail pending Appeal. The Applicant was the accused in Sessions Case No.32/2015 before the Additional Sessions Judge, Khed. The learned Judge vide his judgment and order dated 28.6.2024 convicted him for commission of the offence punishable under Section 392 of IPC and sentenced him to suffer RI for seven years and to pay a fine of Rs.1,00,000/- in default to

suffer RI for one year. Out of the fine amount, 75% was to be paid to the informant and her father-in-law.

2. Heard Mr. Rahul Kurekar, learned counsel for the Applicant and Ms. Ranjana Humane, learned APP for the Respondent No.1-State.

3. The prosecution case is that the first informant was residing with her father-in-law, mother-in-law, her children and her sister-in-law and her daughters at Shiv Budruk, Navjeevan Mohalla, Taluka Khed, District – Ratnagiri in 1994. The incident took place on 13.11.1994. At about 3.00 a.m., three unknown persons entered their house. One of them put a knife on her throat. She shouted. Her parents-in-law came out. The offenders started assaulting the father-in-law. He directed the informant to hand over all the ornaments etc. and cash to those offenders. Accordingly everything was taken by them. In the meantime, her father-in-law had gone out. Therefore, the offenders got worried and they left the place. The robbery was committed in respect of a heavy gold chain, a *mangalsutra*, gold

bangles, ear rings, silver chains, watches and cash. During pendency of the trial, except watches and cash amounts, the ornaments were returned to the informant.

4. Learned counsel for the Applicant submitted that there is no cogent evidence against the Applicant to sustain the conviction. In respect of this case, based on the evidence the Appellant is already in custody since 17.7.2023 out of seven years. He submitted that there is no recovery at the instance of the Applicant. Only evidence is about the identification of the Appellant but no identification parade was held and that evidence is extremely weak.

5. Learned APP opposed these submissions. According to her, the prosecution has proved its case through the evidence of the informant and her father-in-law. She added that the Applicant was absconding for about 30 years and, therefore, bail may not be granted to him. In the past even a proclamation was issued against him.

6. I have considered these submissions and I have perused the evidence of the informant and her father-in-law. The informant was examined as PW-4. She had narrated the prosecution case as mentioned hereinabove. As far as the informant is concerned she stated that she had seen the Appellant at the police station and she had seen him entering the house in the darkness of the house. The very description of this identification shows that it is extremely unsafe to rely on such kind of identification. Her evidence was recorded on 4.1.2024. The incident is dated 13.11.1994. The evidence was recorded after about thirty years. She had seen him when there was darkness all around. It is not possible to believe this kind of identification.

7. PW-3 is the father-in-law of the first informant. He has also narrated the incident. As far as the identification is concerned, he deposed that he was also shown the Appellant on the T.V. screen. He stated that on the basis of his face, he could identify the Applicant. Importantly

PW-3 further stated that the Applicant was residing near their house and used to visit his house for drinking water.

In the cross-examination, he stated that he had not told the police that the Applicant used to come to his house to drink water.

8. The PW-3's evidence was also recorded on 6.12.2023. Thus, it was recorded after about 29 years. If he knew the Applicant as he used to come to his house to drink water, then he should have told the police about this fact earlier. For about thirty years PW-3 has not stated about this fact to anybody. No test identification parade is held. His age at the time of recording of his evidence was 92 years.

9. Considering all these aspects, even identification by this witness is quite doubtful. In this view of the matter, though the learned APP opposed the bail application on the ground that the Applicant was absconding for many years, I am inclined to grant him bail but on certain conditions.

10. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.902/2024 the Applicant is directed to be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- ii. The Applicant is resident of Washim. Therefore, to ensure that he shall be available, he shall report to the Washim Rural Police Station on every first Sunday of the month between 4.00 p.m. to 5.00 p.m. till further orders.
- iii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)