

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

**INTERIM APPLICATION NO. 3787 OF 2024
WITH
INTERIM APPLICATION NO. 3788 OF 2024
IN
CRIMINAL APPEAL NO. 1031 of 2024**

Rupesh Rambhu Sah ..Applicant
Versus
The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 3336 OF 2024
IN
CRIMINAL APPEAL NO. 891 of 2024**

Mantu Ramadhar Patel ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Sandeep Mishra i/b. Vijay Tiwari for Applicant in IA/3787/24
& IA/3788/2024.

Mr. Aamir Shaikh for Applicant in IA/3336/24.

Smt. M. H. Mhatre, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 20 JANUARY 2025

PC :

1. These are the applications for bail in their respective Appeals filed by the original Accused Nos.2 and 3. Their Appeals are admitted. They were tried by the learned Additional Sessions Judge, Thane in Sessions Case No.249 of 2018. The Applicants were arrested on 06.01.2017 and since then they are in custody. They were convicted mainly for commission of the offence U/s.302 r/w. 34 of the I.P.C. and the major sentence imposed was life imprisonment.

2. We have heard Mr. Sandeep Mishra, learned counsel for the Applicant in IA/3787/2024 and IA/3788/2024, Mr. Aamir Shaikh, learned counsel for the Applicant in IA/3336/2024 and Smt. Mhatre, learned APP for the State.

3. The prosecution story is that, on 23.11.2016, at about 3:00p.m. one Mukta Gaikwad approached Kashimira police station and informed the officers that a dead body of an unknown person was found near Mumbai Ahmedabad highway towards East side of Devesh Punjab Hotel. Two police constables went to the spot. They

found the dead body. There was a cement block near the dead body. It was stained with blood. There were injuries on the head, face and different parts of the dead body. On this basis the F.I.R. was lodged and the investigation proceeded.

4. Learned counsel for the applicants submitted that the only incriminating piece of evidence against the applicants is the theory of 'last seen' in the company of the deceased. There is no other incriminating circumstance. They submitted that, as per the prosecution case and the witnesses, the deceased was seen in the company of both these applicants between 8:00p.m. to 8:30p.m. on 22.11.2016. The dead body was found more than about 19 hours after that. The possible time of death is not brought on record. They, therefore, submitted that, there is neither proximity of time of death with the last seen theory, nor proximity of place from where the dead body was found and the place at which the deceased was last seen with the accused. They submitted that, considering this weak piece of evidence, the applicants deserved to be released on bail, because the conviction cannot be based on this piece of evidence.

5. Learned APP submitted that, there is evidence of PW-9, PW-10 and PW-11 and also there is evidence of test identification parade, in which, all these witnesses had identified these accused in the company of the deceased. She submitted that, there is CCTV footage in which the accused Nos.1 to 3 were seen with the deceased at the same time around 8:30p.m. on 22.11.2016. She further added that, there is another circumstance of recovery of gold from a jeweller, but in that case the gold ring and chain was given by the wife of the accused No.1 to that jeweller.

6. We have considered these submissions and we have perused the evidence of PW-9, PW-10 and PW-11. All these three witnesses have stated that, they had seen the deceased in the company of all the accused Nos.1, 2 and 3, at about 8:00p.m. to 8:30p.m. on 22.11.2016. They have also identified these three accused in the test identification parade held in Thane Central Prison.

7. Even assuming that these three witnesses had, in fact, seen the deceased in the company of the applicants, still there is

too much time gap between 8:30p.m. of 22.11.2016 and the point of time at 3:00p.m. of 23.11.2016 when the dead body was discovered. Therefore, there is substance in the submission that the prosecution has not ruled out the possibility of any other person committing the murder of the deceased. The deceased had suffered crush injury on the head and there are other injuries. The cause of the death was mainly the head injury coupled with other injuries. However, at this stage, it can be seen that evidence against the applicants is weak. All these issues will have to be decided at the final hearing stage. But from the discussion above, the applicants have made out a case for their release on bail during pendency of their Appeals.

8. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.1031 of 2024 and the Criminal Appeal No.891 of 2024, the Appellant/Applicant Rupesh Rambhu Sah in Criminal Appeal No.1031 of 2024 and the Appellant/Applicant Mantu Ramadhar Patel in Criminal Appeal No.891 of 2024 are

directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30000/- each with one or two sureties each in the like amount.

ii) All the Interim Applications are disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)