

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4867 OF 2024
IN
CRIMINAL APPEAL NO. 907 OF 2022

Mahesh Ganpat Niture	]	 <i>Applicant</i>
: <i>Versus</i> :		
The State of Maharashtra & Anr.	]	 <i>Respondents</i>

ALONGWITH
INTERIM APPLICATION NO. 4869 OF 2024
IN
CRIMINAL APPEAL NO. 943 OF 2022

Vishal Subhash Kadam	]	 <i>Applicant</i>
: <i>Versus</i> :		
The State of Maharashtra & Anr.	]	 <i>Respondents</i>

Mr. Shubham Sane with Ms. Seema Dighe, Mr. Rajesh Ranglani i/by.
Mr. Priyal Sarda, for the Applicants.

Mr. V.N. Sagare, APP for the Respondent-State.

CORAM : R. N. LADDHA &
SANDEEP V. MARNE, JJ.

Dated : 14 January 2025.

P.C. :

1) These applications are filed by the Applicants seeking suspension of their sentence and for releasing them on bail during

pendency of Criminal Appeals preferred by them. Applicant-Mahesh Ganpat Niture has filed Criminal Appeal No. 907/2022 and the Applicant-Vishal Subhash Kadam has filed Criminal Appeal No. 943/2022 challenging the judgment and order dated 3 August 2022 passed by the Additional Sessions Judge, Pune in Sessions Case No. 711/2012 by which both the Applicants are convicted for the offences punishable under Sections 302, 341 read with Section 34 of the Indian Penal Code, 1860 and Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951 and Section 4(25) of the Arms Act, 1959. The learned Sessions Court has directed the Applicants to undergo life imprisonment in addition to payment of fine.

2) Both the Criminal Appeals have been admitted by this Court by orders dated 11 October 2022. The Applicants preferred Interim Application No. 3017/2022 (*Mahesh Ganpat Niture*) and Interim Application No. 3148/2022 (*Vishal Subhash Kadam*) seeking suspension of sentence and for releasing them on bail. However, since this Court was not inclined to grant any relief in the said Interim Applications, the same were not pressed by the Applicants and were disposed of as such by orders dated 16 February 2023. This Court, however granted liberty to the Applicants to apply afresh in December 2023. Accordingly, the Applicants have filed the present Interim Applications seeking suspension of sentence and for releasing them on bail.

3) We have heard Mr. Sane, the learned counsel appearing for the Applicants and Mr. Sagare, the learned APP appearing for Respondent-State.

4) The Applicants have relied upon order dated 30 September 2024 passed by this Court in case of co-accused-Jitendra Raosaheb Borse, who is also sentenced to undergo life imprisonment

and who is released on bail by suspension of the sentence on account of completion of incarceration in excess of 10 years. The said accused-Jitendra Raosaheb Borse is also convicted alongwith the two Applicants and is directed to undergo the same punishment. It is contended that the role ascribed to the Applicants and Jitendra Raosaheb Borse is identical and therefore suspension of sentence and grant of bail is sought by the Applicants on the principle of parity. This Court passed following order on 30 September 2024 in the case of co-accused-Jitendra Raosaheb Borse :

4. Applicant has been arrested on 18 May 2012 and has been in custody since then. By now, the Applicant has spent more than 10 years in custody, after excluding the period of remissions granted from time to time. Applicant has produced Imprisonment Certificate dated 18 June 2024 issued by Superintendent, Morshi Open Prison, Amravati, certifying that as on 18 June 2024, he had undergone imprisonment for period of 9 years 10 months and 22 days. Therefore, by now the Applicant has undergone custody of 10 years and 2 months. Mr. Sane has relied upon judgments of the Apex Court in *Saudan Singh vs. State of Uttar Pradesh* (Criminal Appeal No.308 of 2022, decided on 25 February 2022) and *Suleman vs. State of Uttar Pradesh* (Criminal Appeal No.491 of 2022 decided on 25 March 2022). He has accordingly contended that since the Applicant has undergone prolonged incarceration of more than 10 years, he deserves to be released on bail.

5. In *Suleman vs. The State of Uttar Pradesh* (supra) the Apex Court has observed as under:

The only issue is whether in a criminal appeal of the year 2012 pending before the High Court of Allahabad where criminal appeals in the normal course are being heard of the 1980s and the appellant having undergone 12 years of actual incarceration is still to be denied bail! The High Court seems to think so and, to say the least, we completely disagree and are of the view that the bail should have been for the asking and the impugned order is completely unsustainable.

Considering the orders passed by the Apex Court in *Sulmean* and *Dinesh @ Paul Daniel Khajekar* (supra) in our view the Appellant deserves to be enlarged on bail pending final disposal of the Criminal Appeal.

6. In *Dinesh @ Paul Daniel Khajekar v/s. The State of Maharashtra & Anr.* Cri. Appeal No.2987/2023 decided on 25 September 2023, the Apex Court has enlarged the Appellant therein on bail only on account of his incarceration for a period of more than 11 years. In that order, the Apex court has held as under:

‘The Appellant has undergone incarceration for a period more than 11 years. In fact, the high court ought to have granted relief under Section 389 of the Code of Criminal Procedure, 1973 to the appellant’

7. The Applicant herein is sentenced to undergo life imprisonment and by now, he had completed incarceration in excess of 10 years. The Criminal Appeal is filed in the year 2022 and it is unlikely that the same would be heard by this Court in immediate near future. In that view of the matter Applicant's incarceration cannot be continued till this Court is in a position to take up the Appeal for decision. Furthermore, period of 1 year and 7 months has elapsed since withdrawal of the previous application on 16 February 2023. Though liberty was granted to the Applicant to apply afresh in December 2023, the present Application has been filed in the month of August 2024. We also note the Applicant does not have any criminal antecedents.

8. In our view, on twin grounds of Applicant completing incarceration for period in excess of 10 years and non-likelihood of the Appeal being decided in immediate near future, he deserves to be released on bail.

5) Both the Applicants have placed on record imprisonment certificates certifying that the total period of imprisonment. Applicant-Mahesh Ganpat Niture as on 31 October 2024, has undergone imprisonment for a total period of 10 years, 3 months and 22 days. Similarly, in respect of Applicant-Vishal Subhash Kadam, the total period of imprisonment undergone by him as on 30 September 2024 is 10 years, 2 months and 22 days. Thus, both the Applicants have completed more than 10 years of incarceration. Perusal of the impugned judgment of the learned Sessions Judge would *prima-facie* indicate similar role being ascribed to the Applicants as that of Jitendra Raosaheb Borse who is already released on bail vide order dated 30 September 2024. In our view, therefore the Applicants also deserve to be released on bail on the principle of parity as there is no likelihood of the Appeals being heard or decided in the immediate near future. We accordingly proceed to pass the following order:

- (i) The sentence imposed on the Applicants vide judgment and order dated 3 August 2022 in Sessions Case No. 711/2012 is suspended and the Applicants are released on bail in connection with Sessions Case No. 711/2012 on

furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

- (ii) After their release from Jail and during the pendency of the present Appeal, the Applicants shall attend the concerned Police Station on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year. After end of one year, the Applicants shall attend the concerned Police Station at interval of three months of every first Monday between 10.00 am and 12.00 noon (i.e. four times in a year).
- (iii) In case of two consecutive defaults in complying with the aforesaid conditions, the Prosecution would be at liberty to file an application for cancellation of bail.
- (iv) Applicants shall not issue any threats to the witnesses associated with the case.

6) With the above directions, both the Interim Applications stand **allowed and disposed of** in the above terms.

[SANDEEP V. MARNE, J.]

[R. N. LADDHA, J.]

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