

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

Criminal Interim Application No.5316 of 2024

in

Criminal Appeal No. 1337 of 2024

Aasif Anwar Khan

... Applicant.

versus

The State of Maharashtra

... Respondent

Mr. Kamran S. Shaikh, for the applicant / appellant.

Mr. Pankaj Deokar, APP, for the respondent/ State.

Coram: R.N. Laddha, J.

Date: 21 January 2025.

P.C.:

1. The applicant is facing trial in Sessions Case No.289 of 2018 for the offence punishable under Sections 307, 342, 436, 440 read with Section 34 of the Indian Penal Code, 1860. By the Judgment and order dated 13 November 2024, the trial Court convicted the applicant and sentenced him as follows:-

- (i) rigorous imprisonment for 10 years and fine of Rs.1000/- under Section 307 read with Section 34 of the Indian Penal Code (in default stipulation).
- (ii) rigorous imprisonment for 10 years and fine of Rs.1000/- under Section 436 read with Section 34 of the Indian Penal Code (in default stipulation).

- (iii) rigorous imprisonment for 2 years and fine of Rs.500/- under Section 440 read with Section 34 of the Indian Penal Code (in default stipulation).

These sentences were directed to run concurrently.

2. Aggrieved, the applicant filed an Appeal before this Court and by the present Application seeks suspension of sentence and release on bail.

3. Mr. Shaikh, the learned Counsel appearing for the applicant highlights the alleged deficiencies in the prosecution case. According to the learned Counsel, no one has injured in the incident. The learned trial Court misread the prosecution evidence and was influenced by number of assumptions which cannot be sustained on the material on record and this has resulted in miscarriage of justice.

4. The learned Counsel for the Applicant submits that the alleged incident in question was occurred on 3 February 2018 and the applicant was arrested on 4 February 2018 and is languishing in jail since then.

5. Mr. Deokar, the learned APP representing the respondent – State, opposing the applicant's request, emphasises the gravity of the offence. The learned APP contends that the evidence on record

strongly supports the prosecution case and does not warrant the suspension of sentence and the Applicant's release on bail.

6. This Court has given anxious consideration to the rival contentions and perused the record.

7. In *Bhagwan Rama Shinde Gosai v. State of Gujarat*, (1999) 4 SCC 421, the Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts

can impose similar conditions when bail is granted.”

8. In this case, the applicant is required to undergo the maximum rigorous imprisonment of 10 years. The applicant is behind bar almost about seven years. The Appeal has been filed in 2024. there is no prospect of appeal being heard in near future.

9. Considering all these aspects, and as the applicant is behind bar since almost about seven years, a case is made out for a grant of suspension of sentence pending the Appeal and release on bail. Hence, the following order :

ORDER

(i) The sentence imposed upon the applicant vide the judgment and order dated 13 November 2024 passed by the Additional Sessions Judge, Thane, is suspended during the pendency of the Appeal, subject to the applicant executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(ii) The Interim Application stands disposed of accordingly.

(R.N. Laddha, J.)