

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

Interim Application No. 5322 of 2024

In

Criminal Appeal No. 1338 of 2024

Yuneb Nasir Kewal

Aged: 32 years, Indian Inhabitant

R/at: Room No.201, Pancharatna

Tower, behind Shams Masjid,

Nayanagar, Miraroad (E).

(At present is in Thane Central Prison)

... Applicant/Org.
Accused No.2

versus

The State of Maharashtra

(At the instance of Nayanagar

Police Station, vide C.R.No.85/2018)

... Respondent

Ms Anjali Patil, along with Mr Tohid Shaikh, for the applicant.

Mr VN Sagare, APP, for the respondent/ State.

Coram: R.N. Laddha, J.

Date: 17 February 2025.

P.C.:

The applicant faced trial in Sessions Case No.289 of 2018 before the Court of Additional Sessions Judge, Thane, for offences punishable under Sections 307, 436, 440 and 342,

read with 34 of the Indian Penal Code ('IPC'). By a judgment and order dated 13 November 2024, the applicant stood convicted and sentenced as follows: (i) ten years rigorous imprisonment and Rs.1,000/- fine (with default stipulations) for the offences punishable under Sections 307 read with 34 of IPC, (ii) ten years rigorous imprisonment and Rs.1,000/- fine (with default stipulations) for the offences punishable under Sections 436 read with 34 of IPC, (iii) two years simple imprisonment and Rs.500/- fine (with default stipulations) for the offences punishable under Sections 440 read with 34 of IPC, and (iv) three months simple imprisonment and Rs.500/- fine (with default stipulations) for the offences punishable under Sections 342 read with 34 of IPC. These sentences were directed to run concurrently.

2. Ms Anjali Patil, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, submits that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The learned Counsel further submits that the applicant has been in custody for four years and was on bail during the pendency of the trial.

3. Mr VN Sagare, the learned Additional Public Prosecutor

representing the respondent/ State, opposing the applicant's request, submits that the evidence on record strongly supports the prosecution's case and does not warrant suspension of the sentence and the applicant's release on bail.

4. In *Narcotic Control Bureau v. Lakhwinder Singh, 2025 INSC 190*, the Hon'ble Supreme Court observed as follows:

"5.Therefore, in our view, if a case is made out for the grant of suspension of sentence and/or bail in deserving cases on merits, the Court is not powerless to grant relief of suspension of sentence and bail pending an appeal, even if an accused has not undergone half of the sentence. There cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

6. In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal."

5. While this Court acknowledges the arguments presented by the learned APP regarding the gravity of the offence and the post-conviction stage of the proceedings, it is essential to

recognise that the applicant has served a significant period of imprisonment. Furthermore, given that the appeal was filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals, a *prima facie* case is made out for granting the applicant the relief of suspension of sentence pending the appeal. Considering the nature of the accusations and the material on record, the applicant is entitled to be released on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 13 November 2024 passed by the Additional Sessions Judge, Thane, in Sessions Case No.289 of 2018, stands suspended during the pendency of the appeal, and the applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

6. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)