

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.736 OF 2025

IN

CRIMINAL APPEAL NO.56 OF 2023

Shubham Vinayakrao Jamnik ... Applicant

Versus

The State of Maharashtra ... Respondent

- Mr. Amit Icham, for the Applicant.
- Ms. Sangita Phad, APP, for the Respondent-State.

**CORAM : MANISH PITALE AND
MANJUSHA DESHPANDE, JJ.**

DATE : 17th NOVEMBER 2025

PC. :

. This is an application filed on behalf of the applicant (accused no.1), seeking suspension of sentence and enlargement of the applicant (original appellant) on bail. At the outset, the learned Counsel for the applicant submits that the co-accused person was granted bail by this Court by order dated 09.11.2023.

2. It is submitted on behalf of the applicant that this is a case of circumstantial evidence wherein the allegation on the accused

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persons, including the applicant is that they kidnapped the minor daughter of the first informant and put her to death. Thereafter, they allegedly destroyed evidence by seeking to burn the dead body and also by burying the remains of the half-burnt dead body at a particular place.

3. The learned counsel for the applicant submits that other than the allegation that the dead body of the victim was found at the behest of the applicant (accused no.1), there is no corroborating evidence in the present case. The Trial Court in the impugned judgment has placed much emphasis on the recovery of the dead body at the behest of the applicant and in that context, it has referred to the evidence of the PW-12 (Investigating Officer), PW-2 (Panch Witness), PW-4 (Nayab Tahsildar) and PW-5 (Doctor). It is submitted that there is no evidence on record to show that the victim was last seen with the applicant and the only connecting link appears to be recovery of the dead body and statement by the witness PW-10 that she had seen the applicant (accused no.1), along with accused no.2 leaving the residential area, carrying a red bag and leaving the place in their vehicle. It is submitted that since there is scant evidence to link the applicant with the incident, this Court may consider enlarging the applicant on bail. It is emphasized that the applicant has remained behind bars since 03.07.2017, thereby

indicating that he has suffered incarceration for a period of about eight and half years.

4. The learned APP on the other hand has vehemently opposed the prayers made in this application. It is submitted that the case of the accused no.2 is easily distinguishable from that of the applicant (accused no.1). It is submitted that recovery of the dead body of the minor victim girl at the behest of the applicant is a crucial circumstance, which cannot be ignored. It is submitted that the trial Court has given a well-reasoned judgment reaching findings against the applicant, which are unimpeachable and therefore, the applicant has failed to make out a case on merits.

5. It is further submitted that there is a possibility of the applicant absconding upon being released on bail

6. We have considered the rival submissions. A perusal of the order dated 09.11.2023 passed by a Division Bench of this Court [Coram : Revati Mohite Dere & Gauri Godse, JJ.], in Interim Application No.3989 of 2023 in Criminal Appeal No.702 of 2023, shows that the co-accused person was enlarged on bail on the ground that the trial Court had relied upon certain statements made by the aforesaid accused in his bail application, wherein certain admissions were purportedly made about the said accused having accompanied the applicant herein during the the

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time period when the incident took place. Reference was also made to recovery of certain pillows at the instance of the said accused, which was not found to be an incriminating circumstance.

7. There is substance in the contention of the learned APP that the reasoning adopted by this Court while granting bail to the co-accused person cannot inure to the benefit of the applicant herein, as the allegations against the co-accused person are distinguishable.

8. Nonetheless, we have considered the material on record, the contents of the impugned judgment and order passed by the Trial Court to examine as to whether, a *prima facie* case is made out by the applicant for grant of bail and as to whether, the applicant can be released on bail conditionally.

9. We find that according to the prosecution, the recovery of the dead body of the minor girl victim was at the behest of the applicant and for that purpose, evidence of witnesses, i.e, PW-2, 4, 5 and 12 was sufficient. From the evidence of PW-12, i.e, the Investigating Officer we find that according to him, suspicion arose when the accused persons, including the applicant started giving evasive answers on specific queries put to them. It is stated that both the accused person were summoned from the place they had reached after leaving the residential area from where

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the minor girl had disappeared. It is claimed that upon being questioned, the applicant agreed to lead the investigating team to the place where the dead body of the victim was buried. PW-2 along with PW-4 Nayab Tahsildar are relied upon for supporting the version of the prosecution. PW-4 Nayab Tahsildar failed to recognize the applicant and instead stated the name of the co-accused person when called upon to identify the applicant.

10. In this context, the evidence of PW-10, i.e., a person living in the neighborhood was also relied upon on behalf of the prosecution to oppose the present application. A perusal of the evidence of the said witness shows that according to her, the victim girl had spoken to her on the date of the incident and thereafter, she went 'upstairs'. It was further stated that the applicant with the co-accused person was a tenant on the first floor of the building. Even this witness, who appears to have seen the minor victim girl for the last time, does not make any statement about having seen the victim girl in the company of the accused persons, much less the applicant in this application. Therefore, there is not a single witness to support any last seen theory against the applicant. The only incriminating circumstance against the applicant appears to be the statement of PW-10 that she saw him with a red bag and thereafter, he along with the co-accused person went away from the said place in their vehicle.

11. As regards the red bag, the aforementioned witness stated during the recording of evidence that she could identify the bag upon being told that these were the remnants of the half-burnt bag recovered from the spot from where the dead body was recovered.

12. We find that in such circumstances, other than the recovery of the dead body of the victim girl allegedly at the behest of the applicant, there does not appear to be any corroborating material and there is not a single witness to demonstrate that the victim was last seen in the company of the applicant before she disappeared. Hence, a *prima facie* case is made out by the applicant in his favor. The applicant has suffered incarceration for a period of about eight and half years during the course of trial and after filing of the present appeal. In such circumstances, he can be granted bail conditionally. We are of the opinion that the same conditions as imposed on the co-accused can be imposed on the applicant also.

13. In view of the above, **the application is allowed**. The sentence imposed upon the applicant is suspended and he is directed to be enlarged on bail on the following conditions :

(i) The applicant be enlarged on bail on furnishing PR Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

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- (ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;
- (iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(MANJUSHA DESHPANDE, J.)

(MANISH PITALE, J.)