

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 989 OF 2025
IN
CRIMINAL APPEAL NO. 424 OF 2022

Mahendra Kesrinath Mestri	...Applicant
IN THE MATTER BETWEEN	
Karan Nandkumar Patil and Anr.	...Appliants
<i>Versus</i>	
State of Maharashtra	...Respondent

Mr. Irfan Shaikh, Appointed Advocate, for the Applicant.
Mrs. G. P. Mulekar, APP, for the Respondent-State.

CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

DATED: 25th JULY 2025.

ORAL ORDER : (Per: Suman Shyam, J.)

1. Heard learned legal-aid Counsel Mr. Irfan Shaikh appearing for the applicant. Also heard Mrs. Geeta.PMulekar, the learned APP appearing for the State.

2. The applicant herein was one of the co-accused persons, who were convicted by the judgment and order dated 21st October, 2020 passed by the learned Additional Sessions Judge, Gr. Mumbai in connection with Sessions Case No. 760 of 2013 under section

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302 IPC, whereby, the applicant was awarded jail sentence of imprisonment for life and also directed to pay fine of Rs. 5,000/-.

3. By filing the present application, the applicant has approached this Court for the second time seeking suspension of his jail sentence and also for his release on bail by invoking the principle of parity on the basis of order dated 27th January, 2025, passed by the Hon'ble Supreme Court in SLP(Cri.) No.18447 of 2024. It is to be noted herein that the bail prayer jointly made by the present applicant alongwith three other co-accused was earlier rejected by a Co-ordinate Bench of this Court (Coram: A.S. Gadkari and Milind N. Jadhav, JJ.) by the order dated 19th September, 2022, passed in Interim Application No. 3331 of 2021 arising out of Criminal Appeal No 424 of 2022 by taking note of the facts and circumstances of the case, more particularly, the evidence of the eye witnesses as well as nature of injuries suffered by the deceased.

4. It appears that the order dated 19th September, 2022, was assailed by one of the accused viz. Dilip Shripad Bhalerao by filing SLP (Cri) No. 18447 of 2024 before the Hon'ble Supreme Court. Taking note of the fact that the applicant therein had suffered incarceration for more than ten years, the Apex Court had passed order dated 27th January, 2025 in SLP (Cri) No. 18447 of 2024, releasing Dilip Shripad Bhalerao on bail.

5. Mr. Shaikh, learned legal-aid Counsel appearing for the applicant has submitted that the only ground on which his client has approached this Court by filing the present application seeking bail is on the principle of parity, in view of the order dated 27th January, 2025, passed by the Supreme Court.

6. Mrs. Mulekar, the learned APP, on the other hand, has referred to the judgment of the Hon'ble Supreme Court rendered in the case of **Shivani Tyagi vs. State of U.P. & Anr.**¹ and submitted that mere long incarceration cannot be the sole ground for releasing a convict on bail by invoking jurisdiction under Section 389 of the Code of Criminal Procedure (for short 'Cr.P.C.') more so when the prosecution case is based on the testimony of eye witnesses to the occurrence. She, therefore, submits that the bail prayer made by the applicant deserves to be rejected.

7. We have considered the submissions made at the bar and have also gone through the material available on record.

8. It is correct that by the order dated 27th January, 2025, the Hon'ble Supreme Court had granted bail to one of the co-accused/convicts, viz. Dilip Shripad Bhalerao, by taking note of the fact that he had undergone incarceration for more than ten years. Viewed from that angle, the applicant herein, also having undergone incarceration for a period exceeding ten years, undoubtedly stands on a similar footing. However, what is also to be noted herein is

1 Criminal Appeal Nos. 1957-1961 of 2024

that the order dated 27th January, 2025, was passed by the Hon'ble Supreme Court in a petition filed by a co-accused wherein, the earlier order dated 19th September, 2022 passed by the Division Bench of this Court (Coram: A.S. Gadkari and Milind N. Jadhav, JJ.) was put under challenge. It is not in dispute that no such SLP has been filed by the present applicant against the order dated 19th September, 2022. Therefore, the order dated 19th September 2022, in so far as the present applicant is concerned, has attained finality in the eyes of law.

9. We have already noted that the order dated 19th September, 2022 was passed after taking note of the peculiar facts and circumstances of the case. Upon examination of the record, we find that there is sufficient incriminating material against the applicant and his conviction is also based on the testimony of eye witnesses account. The grievous nature of injuries suffered by the victim also goes to show the brutality with which, the offence was committed. Record also reveals that there are as many as 29 external injuries (stab wound, chop wound, incised wound etc.) and 8 internal injuries on the vital parts of the body-victim, which indicate the gravity and the mode of commissioning the offence.

10. By taking note of the decision in the case of **State of Haryana vs. Hasmat**² the Apex Court has observed, in the case of **Shivani Tyagi (supra)**, that factors, such as, nature of offence, mode of commission of offence and the gravity of offence are also to be

2 (2004) 6 SCC 175

considered objectively, alongwith the period of incarceration, while passing an order under Section 389 of the Cr.P.C.

11. Be that as it may, since the order dated 19th September, 2022, *qua* the applicant, has not been assailed before a higher forum, this Court is of the considered opinion that having regard to the facts and circumstances of the case, unless the said order is interfered with by a Superior Court, there is no scope for this Court to take a different view in the matter by ignoring the evidence available on record. In other words, we are of the opinion that since the order dated 22nd September, 2022 has not been interfered with by a Superior Court, it would not be permissible for this Court to review the earlier order rejecting the bail application of the applicant on the same set of evidence.

12. For the reasons stated above, we are not inclined to entertain the present application filed only on the ground of parity. However, we make it clear that notwithstanding this order, the applicant would be at liberty to avail appropriate the legal remedy, as may be permissible under the law.

13. With the above observations, the Interim Application stands rejected.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)