

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1288 of 2025
in
CRIMINAL APPEAL NO. 437 OF 2025

Vishal Krushna Mhatre

... Applicant/
Appellant

versus

State of Maharashtra & Anr.

.... Respondents

Mr. Vikrant A. Desai, Advocate for the Applicant/Appellant.

Mr. Ashok Gawai, APP for Respondent No.1-State.

Ms. Vilasini Balsubramanian, Appointed Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 24th DECEMBER, 2025.

P.C. :

1. The appellant/applicant is seeking suspension of sentence and enlargement on bail in connection with the impugned judgment and order dated 8th May 2024 passed in Special (Atrocity) Case No.13 of 2021, whereby the appellant as well as co-accused came to be convicted for the offences punishable under Section 376 read with 34 of the the Indian Penal Code 1860 (for short "IPC") and sentenced to suffer rigorous imprisonment for ten years with fine.

2. Learned counsel for the applicant/appellant submits that the co-accused against whom there is evidence in the form of the DNA report has been enlarged on bail by this Court by order dated 4th September 2025 in Interim Application No.3693 of 2024 in Criminal Appeal No.813 of

2025. It is his submission that on parity as well as considering the evidence on record, the appellant is entitled to be enlarged on bail, since he has already undergone 5 years of sentence out of 10 years.

3. Learned counsel for respondent No.2 as well as learned APP opposed the application. Learned counsel for respondent No.2 drew attention of the Court to the judgment of the Hon'ble Supreme Court in case of **Sagar versus State of Uttar Pradesh and anr. 2025 SCC Online SC 2584** in order to argue that it is not permissible for the Court to pass order of bail merely on parity without considering the role of the appellant who has sought enlargement. It is also argued that release of the convict within a short span of time may not be possible view of the number of pending cases and in such circumstances, attempt should be made to dispose of the appeal expeditiously. To support this submission, reliance is placed on Supreme Court Judgment in case of **Shivani Tyagi vers State of U.P. and anr. 2024 SCC Online SC 842,**

4. There cannot be any dispute made with regard to the proposition sought to be canvassed by learned counsel for respondent No.2 that unless the Court considers the role played by the convict as compared to the co-accused, the parity cannot be applied. Herein this case, however, the co-accused against whom there is strong evidence than the accused/appellant herein has already been granted bail by this Court by order dated 4th September 2025. This order has not been taken exception before the Supreme Court.

5. There is no embargo on the Court to grant bail to the accused person on parity, however, the Court is required to consider different role, if any, of the person who seeks bail. Here in this case, the role alleged against both accused is identical. It is the contention of learned counsel for the appellant that there is evidence against the co-accused in the form of DNA report, which is absent against the present appellant. Thus, there is differentiation which can be made in the nature of evidence against both. Since the appellant has already undergone half of the sentence imposed and as the co-accused is already enlarged on bail, this Court finds no impediment in allowing the application. Hence, the following order :

ORDER

1. The application is allowed.
2. The substantive sentence imposed against the appellant by judgment and order dated 8th May 2024 in Special (Atrocity) Case No.13 of 2021 passed by Special Judge, Raigad-Alibag, stands suspended till the decision of appeal.
3. The appellant be enlarged on bail on furnishing P.R.Bond of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Trial Court.
4. The appellant shall attend the concerned police station once in three months i.e. on first Saturday between 11.00 a.m. to 2.00 pm during the pendency of appeal.

The interim applications stand disposed of in above terms.

5. It is clarified that the above mentioned observations are made on *prima facie* consideration of the material on record and the same shall not bind the parties during the final hearing of the appeal.

(R. M. JOSHI, J.)