

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRI. INTERIM APPLICATION NO. 5133 OF 2024
IN
CRIMINAL APPEAL NO. 374 OF 2021

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Maheboob @ Firoz Chandsab Jamadar

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Faizal Shaikh (though VC) for the Applicant.
Mr. A.A. Naik, APP for the Respondent - State.
.....

**CORAM : MADHAV J. JAMDAR &
PRAVIN S. PATIL, JJ.**

DATE : 30th MARCH, 2026.

P. C. :

1. Heard Mr. Shaikh, learned counsel for the applicant and Mr. Naik, learned APP for the State.

2. This Interim Application is filed seeking release of the applicant on bail during the pendency of the Appeal. It is the submission of Mr. Shaikh, learned counsel for the applicant that the applicant was arrested on 13th February 2018 and he has completed more than eight years of actual imprisonment. He submits that the applicant has been convicted

under Section 302 of the Indian Penal Code by learned Additional Sessions Judge, Solapur by order dated 1st February 2021 passed in Session Case No. 169 of 2018. He submitted that, as per the prosecution case, the deceased was married to one Iqbal Shaikh and had two children. However, since her husband was addicted to liquor, she came to her maternal home along with children and started staying with her mother and brother's wife. As per the prosecution case, thereafter she had developed relationship with the applicant. It is further prosecution case that the applicant was having suspicion that the deceased was having relationship with some other person and therefore, on 13th February 2018 the applicant assaulted the deceased with knife, which was used for cutting watermelon. It is his submission that the case is of circumstantial evidence. In any case, he submits that the applicant has completed eight years of imprisonment and there is no likelihood that the Appeal will be heard finally during short period and, therefore, the applicant be released on bail.

3. On the other hand, Mr. Naik, learned APP, strongly opposed the application. He submitted that the applicant is involved in the crime and there is evidence on record showing his involvement in the offence. He, therefore, submits that the interim application be dismissed.

4. Before considering the rival contentions, it is necessary to set out the prosecution case. The prosecution case is set out in paragraph nos. 2 to 4 of the impugned judgment and order dated 1st February 2021 passed by the learned Additional Sessions Judge, Solapur in Session Case No. 169 of 2018, which reads as under :-

“2] It is the case of prosecution that, Bilkis was the daughter of Bismillah. Her marriage was performed with Iqbal Shaikh of Nasik. Bilkis has two children. Thereafter her husband was addicted to liquor and therefore, she came to her maternal home along with children. Bilkis, her mother Bismillah and brother's wife Faimida Firoz Ansari were residing jointly at Solapur in Mullababa Tekadi locality along with children. Bilkis had love affair or illicit relations with Maheboob @ Firoz Chandsab Jamadar, resident of same lane since four to five years.

3] On 12.2.2018 at about 12.00 noon Bilkis told to Faimida that prior to some time Firoz (Hereinafter referred as accused) came to the house and snatched mobile phone from the hands of daughter of Bilkis. Bilkis told to Faimida to disclose to her mother Bismillah. Faimida went to Laxmi market where her mother-in-law Bismillah was selling vegetables and disclosed the fact of taking mobile by accused. At the same time her mother-in-law received phone call of Bilkis and she told her to come to house and therefore, Bismillah and Faimida came to the house. Accused was at their house and was quarreling with Bilkis by taking suspicion that Bilkis has illicit relations with other person. Faimida and Bismillah gave understanding to accused. There was knife in the pant pocket of accused and when asked by Bismillah he disclosed that, he brought the knife for cutting water melon. When Bismillah asked about the

phone of Bilkis, accused told that, phone is with him and he will return at the night. Again at about 8.00 to 9.00 p.m. Bismillah told to accused to return the mobile phone that time he told that, he will return at the morning.

4] On 13.2.2018 at about 6.30 a.m. Faimida was sleeping in the house. She heard the loud cry of Bilkis and therefore, she woke up and came out of house. She found Bilkis was lying on the ground and blood was oozing and accused was passing from the front side. She gave call to accused, but he abused and ran away. She came to Bilkis and found knife injuries on the throat and stomach. One knife used for cutting water melon was lying there. She immediately went to Laxmi market and disclosed the incident to her mother-in-law Bismillah. Thereafter they both came to Bilkis and with the help of Khairun and Sohail they took Bilkis to Civil Hospital by auto-rickshaw, where doctor on examination declared that Bilkis is dead. Thereafter Faimida lodged the report in Faujdar Chawadi Police Station.”

5. In view of the above prosecution case, it is relevant to note that the Supreme Court in case of **Shivani Tyagi Vs. State of Uttar Pradesh**¹ has held that factors like the nature of offence held to have been committed, the manner of its commission, the gravity of offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the order passed under Section 389, of the Code of Criminal Procedure, 1973.

¹ (2024) SCC OnLine SC 842

6. In this particular case, the applicant was in relationship with the deceased, who is a married lady having two children. As the husband of the applicant was addicted to liquor, she has shifted to her mother's place along with her children. The applicant was carrying a suspicion that the deceased was having relationship with some other person and, therefore, the incident had taken place. The case is of circumstantial evidence.

7. It is a submission of learned Counsel appearing for the applicant that the applicant has no other antecedents. The applicant is behind bars from 13th February 2018 i.e. for more than eight years. It is not likely that the Criminal Appeal will be heard finally during a short period. Accordingly, a case is made out for suspension of sentence and for releasing the applicant on bail. Hence, we pass following order :

ORDER

[a] The sentence imposed on Applicant by learned Additional Sessions Judge, Solapur vide judgment and order dated 1st February 2021 passed in Session Case No. 169 of 2018 is suspended till the final disposal of Criminal Appeal No. 374 of 2021.

[b] The Applicant be released on furnishing PR bond in the sum of Rs.25,000/- each with one or more solvent sureties of like amount in connection with Session Case No. 169 of 2018.

[c] The Applicant shall attend this Court when the Appeal is listed for final hearing.

8. Interim application stands disposed of.

[PRAVIN S. PATIL, J.]

[MADHAV J. JAMDAR, J.]