

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

INTERIM APPLICATION NO.2355 OF 2024
IN
INTERIM APPLICATION N.2533 OF 2022
IN
CRIMINAL APPEAL NO.1017 OF 2022

Rajesh Shankar Rajiwade
versus
The State of Maharashtra

Applicant

Respondent

Mr.Anush Shetty i/by Dr.Yug Mohit Chaudhary for Applicant.
Ms.Geeta P.Mulekar,APP, for Respondent State.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.**

DATE: 17th March 2026

P.C.

1. This Interim Application has been filed by the Applicant-accused praying that the conditions of bail be modified, as imposed by this Court by order dated 11th December 2023, passed on Interim Application No.2533 of 2022, whereby the said application of the Applicant for suspension of sentence of grant of bail was allowed in terms of the following order :

“1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 1017 of 2022.

2. The applicant is convicted vide judgment and order dated 23rd December 2021 passed by learned Additional Sessions Judge, Mangaon District Raigad in Sessions Case No. 48 of 2019, for offence under Section 302 of Indian Penal Code, 1860 and sentenced to suffer imprisonment for life.

3. The case of the prosecution is that the deceased was killed by accused by strangulating him. There is no eye witness to the incident. Complaint was lodged

by son of the deceased. During the course of investigation, statements of two witnesses were recorded. According to them, the applicant had made extra judicial confession admitting that he has killed the deceased.

4. Learned Advocate for the applicant submitted that there is no strong evidence to convict the applicant in the crime. Case is based on the evidence of two witnesses viz. PW-2 and PW-3 to whom, the applicant had made extra judicial confession. It is submitted that the version of these two witnesses is doubtful. They did not approach the police on confession being made by the applicant. The FIR is lodged by son of the deceased. There is no other evidence to corroborate the version of these two witnesses. Applicant is in custody for a period about five years.

5. Learned APP submitted that trial Court has accepted the evidence of PW-2 and PW-3. Although, both these witnesses have deposed that the applicant/appellant had confessed to them about killing the deceased. The witnesses were cross-examined by the defence but could not succeed in demolishing their evidence. The trial Court has referred to the fact that there was blood stained on the t-shirt of the accused which is considered as one of the circumstance to show the involvement of the applicant. The medical evidence discloses that there was blood oozing from nose and mouth of the accused. Hence, the application for suspension of sentence may be rejected.

6. We have perused the paper-book and the evidence of the witnesses. Undisputedly there is no eye witness to the incident. Case is based on circumstantial evidence. Motive for committing crime is not very clear. Prosecution relying upon evidence of PW No.2 and PW No.3. The said witness referred to the alleged extra judicial confession made by the applicant. It is settled law that the such evidence is weak in nature. It is pertinent to note that both these witnesses had not approached the police immediately after the purported confession being made to them. FIR is lodged by son of the deceased. It is not clear as to when statement of these two witnesses were recorded. It is also pertinent to note that the report regarding blood group of the deceased was inconclusive. The applicant is in custody for five years. Considering these circumstances, case for suspension of sentence and grant of bail is made out.

ORDER

- (i) Interim Application No. 2533 of 2022 is allowed.
- (ii) Substantive sentence imposed vide judgment and order dated 23rd December 2021 passed by learned Additional Sessions Judge, Mangaon in Sessions Case No. 48 of 2019 is suspended and the applicant is directed to be released on bail on executing PR bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report concerned Police station once in a three months on first Saturday of the month between 11:00 am to 02:00 p.m. till further orders.
- (iv) Application stands disposed off."

2. The Applicant has contended that he was arrested on 28th April 2019 in connection with the case in question and at the conclusion of trial, he was

convicted on 23rd December 2021 by the judgment and order passed by the learned Additional District & Sessions Judge, Mangaon, in Sessions Case No.48 of 2019 under Section 302 of Indian Penal Code and since then the Applicant is in custody. Learned counsel for the Applicant submits that this Court in the Interim Application No.2533 of 2022 although has suspended the sentence and granted bail to the Applicant, however, as the Applicant could not fulfill the conditions due to poverty and estranged relations with relatives, the Applicant continues to remain in jail as he is not in a position to offer one or more sureties as directed. It is hence his prayer that he may be enlarged on temporary bail by furnishing personal bond as directed.

3. Raising such contention, learned counsel for the Applicant has placed reliance on a decision of the Supreme Court in **Re : Policy Strategy for Grant of Bail**¹ and contended that the Supreme Court has laid down the guidelines for grant of bail in cases where the under trial or the convict is not in a position to furnish sureties due to incarceration. The relevant extract of the Supreme Court decision reads thus :

“With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications :

“1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department.

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

¹Suo Moto Writ Petition (Criminal) No.04/2021, dated 31-1-2023

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.”

(Emphasis supplied)

4. The Applicant has also contended that he undertakes to abide by the other conditions imposed by this Court in the said order dated 11th December 2023 in Interim Application No.2533 of 2022 (supra).

5. Having heard the learned counsel for the Applicant and the learned APP, we are of the opinion that the prayer, as made in the Interim Application, is required to be granted.

6. We may also refer to a recent order passed by this Court in **Satish Mahipal Walmiki @ Raja Arun Shettiyar @ Pahilwan Vs. The State of Maharashtra**². In similar circumstances, the prayer of the Applicant therein was to the effect that he be released on bail only on executing PR bond of Rs.15,000/- as he was unable to furnish sureties, as ordered. This Court allowed the said Interim

²I.A.No.1889/2023, dated 10-3-2026

Application referring the observations of the decision of Supreme Court in **Ramchandra Thangappan Aachari Vs. State of Maharashtra**³. The relevant extract of the said order is required to be noted, which reads thus :

“4. In our opinion, considering the facts of the case as also what has been noted by the co-ordinate Bench of this Court in the order dated 17 January, 2023 while suspending the sentence and allowing the Bail application, the condition directing the appellant/applicant to furnish one or more sureties in the like amount needs to be relaxed and the appellant/applicant needs to be released on bail only on executing P.R.Bond of Rs.15,000/-.

5. We may also observe that in similar circumstances, the Supreme Court in **Ramchandra Thangappan Aachari Vs. The State of Maharashtra**, wherein the petitioner was deprived of the benefit of a bail order, as the petitioner was unable to furnish local surety, the following observations were made :

4. The justice delivery mechanism cannot be oblivious of the plight of the indigent convicts who are unable to provide local surety. For their incapacity to meet the bail terms, the applicant continues to languish in jail notwithstanding the bail order passed in his favour as far back as on 03.05.2024.

.....

6. It would be a travesty of justice if the petitioner is unable to secure the benefit of bail order for his inability to furnish local surety. This will infringe the rights guaranteed under Article 21 of the Constitution for the person, who continues to be detained despite a bail order in his favour.

7. Having considered the circumstances here, we deem it appropriate to say that the petitioner be released on bail on his personal bond without insisting on local surety, to ensure compliance with this Court's bail order dated 03.05.2024. It is ordered accordingly.”

7. In the aforesaid circumstances, we are inclined to allow the present Interim Application in terms of the following order :

ORDER

- (i) Interim Application No.2355 of 2024 stands allowed;
- (ii) The substantive sentence imposed on the Applicant vide judgment and order dated 23rd December 2021 passed by the learned Additional District & Sessions

³Petition for Special Leave to Appeal (Cr.) No.3363/2024, dated 18.9.2024

Judge, Mangaon, District Raigad in Sessions Case No.48 of 2019, as suspended by a co-ordinate Bench of this Court by order dated 11th December 2023 in Interim Application No.2533 of 2022, on the condition that the Applicant being directed to be released on bail on execution of P.R.Bond in the sum of Rs.50,000/- shall apply as the only condition. The condition to furnish one or two sureties in the like amount, stands deleted;

(iii) Accordingly the Applicant shall be released on bail on the Applicant executing P.R bond in the sum of Rs.50,000/-;

(iv) Further, the order dated 11th December 2023 passed in Interim Application No.2533 of 2022 shall stand modified to a further extent that the Applicant is directed to report to the Sessions Court, Mangaon, District Raigad on every first Monday of the month commencing from April-2026;

(v) In the event of two consecutive failures on the Part of applicant to report the Sessions Court, Mangaon, as directed in clause (iv) above, the Applicant shall be taken into custody and shall not be entitled to bail anytime in future till the disposal of the Appeal;

(vi) Interim Application is disposed of in the above terms.

8. This order be immediately forwarded to the concerned Superintendent of Jail by the Registry, as also the learned APP shall also forward this order to the concerned authorities.

9. List the Appeal on **21st April 2026** by which time the paper books etc. be made ready by the office.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)