



varsha

1 / 5

19-ia-3714-appeal-46-23.docx

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

**INTERIM APPLICATION NO. 3714 OF 2022
IN
CRIMINAL APPEAL NO. 46 OF 2023**

Dipika Manish Parmar ... Applicant/Appellant

vs.

The State of Maharashtra ... Respondent

Mr P.V. Vare, for the Applicant/Appellant.

Mr V.B. Konde Deshmukh, A.P.P for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 10th JULY, 2023

P.C. :-

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant vide Judgment and Order dated 20th April 2022, passed by learned Sessions Judge, Mumbai in Sessions Case No. 508 of 2011, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, and sentence of life imprisonment and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for 3 months;
- for the offence punishable under Section 317 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years.

Both the aforesaid sentences are directed to run concurrently.

4. Perused the papers. The prosecution case rest entirely on circumstantial evidence. According to the prosecution, the incident took place on 26th October 2010 at K.E.M Hospital, Ward No. 2, Parel, Mumbai-12. It is alleged that the applicant gave birth to twins i.e. one male and one female child and after delivering threw the female child from the bathroom window and as such, committed offences punishable under Sections 317 and 302 of the IPC.

5. Learned counsel for the applicant submits that the prosecution's case rests on circumstantial evidence and that the

only circumstance against the applicant is, an extra judicial confession. He submits that as far as CCTV footage is concerned, which allegedly shows that the applicant was with the child when she went to the bathroom and when she returned, she did not have the child with her, was not produced by the prosecution. He further submits that in any event, the prosecution has not placed on record the Section 65B certificate to prove the said footage. He submits that in the absence of any cogent evidence, the applicant could not have been convicted by the Trial Court.

6. Learned counsel for the Applicant further submits that on the contrary, soon after the incident, the applicant raised hue and cry, that her child has been stolen pursuant to which the child was found behind the hospital building. He submits that the baby was found lying on a pillow like cloth, surrounded by mud, water etc. He submits that evidence shows that one ear of the child was missing and that it is the prosecution's case that the rats might have eaten the ear. He submits that since soon after the incident, the child was traced i.e. (was found lying on pillow like cloth, with a ear missing) and as such it is difficult to believe, that

the applicant had thrown the child out of the window.

7. Prima facie, an extra judicial confession is the only circumstance against the applicant. Admittedly, the prosecution has not placed on record the Section 65 B certificate nor has the CCTV footage, been proved by the prosecution.

8. It is also not in dispute that whilst on bail, the applicant has not abused or misused the liberty granted to her. The Applicant's Appeal is admitted on 12th January 2023 and the same is not likely to be heard immediately.

9. Considering what is stated aforesaid, the application is allowed and the applicant's sentence is suspended and she is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;

ii) The applicant shall report to the trial Court,

once in four months on the day/date specified by the trial Court, till the appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of her 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.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)