

Rohit Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 331 OF 2026
IN
CRIMINAL APPEAL NO. 96 OF 2025

Ramsem Khova Kurio

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prashant Pandey a/w Ms. Ridhima Mangaonkar, Mr. Dinesh Jadhvani, Ms. Neha Balani and Mr. Nikhil Sonar i/b W3Legal LLP, Advocates for the Applicant.

Ms. Sangeeta D. Shinde, APP for the Respondent-State.

CORAM: *BHARATI DANGRE &
ASHISH S CHAVAN, JJ.*

DATE : *1st OCTOBER 2026*

ORDER [Per Ashish Chavan, J.]:

1. The Applicant who is arraigned as the solitary Accused in the proceedings before the Trial Court has approached this Court seeking suspension of sentence imposed on him vide order and judgment dated 23.08.2024 convicting him for offenses punishable under Section 302, of the Indian Penal Code, 1860 (“IPC”) and bail pending Appeal. The Applicant was sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default of which to suffer rigorous imprisonment for

two months for the offence punishable u/s 302 of the IPC.

2. Heard, Mr. Pandey, for the Applicant and Ms. Shinde, APP for Respondent-State, perused the Application and Appeal.

3. The case of the prosecution is that, the informant who is a friend of the deceased, a young girl hailing from the State of Mizoram came to Mumbai in the year 2009 and stayed together at Juhu Tara Road as tenants. From 2010, they went to Indore for work and came back to Mumbai in the year 2014. They were working together in a spa. In 2018, the deceased started residing at Kalina, Santacruz with her boyfriend i.e the Applicant. On 15.08.2019, the informant received a message from her friend James at 3.30 am informing her that the Applicant was assaulting the deceased and he asked the informant for the phone number of the parents or brother of the deceased.

The informant saw the message only at 10.00 am the next morning and informed James of not having the number of any family member of the deceased. The informant requested another friend who also stayed in the vicinity to visit the deceased. In the afternoon, the friend called the informant and informed her that although she tried to call the deceased on her phone but the call was not answered. Her boyfriend, the Applicant called the friend and informed her that the deceased was sleeping. The informant states that since the deceased and herself were

working together, she had disclosed to the informant that the Applicant used to assault her frequently suspecting her character. On 19.08.2019, at 10.30 am, the informant learnt that the deceased was unwell and admitted at a nursing home in Kalina. She went there and was told to take the deceased to a government hospital. The deceased was taken to V N Desai Hospital where she was declared dead. Informant saw that there were injuries near left eye, chin, both cheeks, hip, shoulder, left leg and both hands of the deceased. Suspecting foul play, she filed a report which was registered by the Vakola Police Station as FIR No. 393/2019.

4. During the course of investigation, various panchnamas including inquest panchanama were drawn, the dead body was forwarded for post mortem, accidental death report was registered, statements of various witnesses were recorded, pursuant to the registration of the FIR, the Applicant was arrested on 20.08.2019. Investigation was concluded, chargesheet was filed. Case was committed to the Sessions Court. The Applicant pleaded not guilty and claimed to be tried. The prosecution examined seven witnesses. No defence witnesses were examined by the Applicant. The defence of the Applicant was that of total denial and false implication.

5. Learned Counsel for the Applicant has criticised the invocation of Section 106 of the Evidence Act while arguing that Section 106 of the Evidence Act does not relieve the prosecution of its primary burden of

establishing its own case. The Ld. Counsel for the Applicant relied upon the judgment of *Shivaji Chintappa Patil vs. State of Maharashtra*¹ to support his argument on the aspect of Section 106 of the Evidence Act. Emphasizing that the entire case of the prosecution against the Applicant is based on circumstantial evidence, Ld. Counsel for the Applicant submitted that there was no eye witness to the alleged assault on the deceased. The informant and PW No. 2 have admitted that they have never seen the Applicant. The friend of the informant who had visited the scene of offence and interacted with the Applicant was not examined. He also argued on the long period of incarceration suffered by the Applicant i.e. nearly seven years of custody.

6. Learned APP Ms. Shinde, countered the aforesaid submissions arguing that the chain of circumstantial evidence was complete. The death is proved to be homicidal. Evidence of PW No. 1 and PW No. 2 clearly implicates the Applicant. She submitted that the evidence demonstrated that from 15.08.2019 to 19.08.2019, the deceased was staying with the Applicant. The Applicant has not demonstrated anything to the contrary. The Applicant himself brought the deceased into the hospital, she was dead and when the doctor examined her, he discovered injuries on her thighs, chest and arms. The post mortem and inquest followed after the doctor informed the police. It was submitted that the

¹ (2021) 5 SCC 626

Applicant has not given any satisfactory explanation as to the injuries or the death of the deceased. Admittedly the Applicant and the deceased were in a relationship and staying together. Hence, it was incumbent upon the Applicant to give an explanation as to how the deceased sustained injuries grave enough to cause her death.

7. Out of the seven witnesses examined by the prosecution, PW Nos. 1 and 2 are crucial. PW No. 1 is a friend and colleague of the deceased girl. She was staying along with the deceased in 2009 and 2010 in Mumbai. They were working together in a spa. They also worked together from 2010-14 at Indore and from 2014-17 they used to reside together. She narrates that since the year 2018, the deceased started residing along with the Applicant who was in a relationship with her. Narrating the events of 15.08.2019, she states that at about 3.30 am, she received a message on her phone from PW No. 2 asking for the contact numbers of deceased' parents. This message was seen by PW No. 1 only at 10.00 am in the morning when she replied in the negative. Thereafter, she called another friend who was staying in the vicinity of the house of the deceased to go to her house. In the afternoon, the friend called PW No. 1 and informed her that the deceased is not responding to her calls and also that the Applicant had called her informing her that the deceased was not well and she was sleeping. PW No. 1 further narrates that she along with the deceased and the aforesaid common friend were

working at the same place and that the deceased used to tell her that the Applicant used to harass her and beat her. PW No. 2 corroborates the fact that on 15.08.2019, the deceased called him up at 2.42 hrs and told him that she wanted to go to her home town. PW No. 1 further narrates that on 19.08.2019 at about 10.30 am, she came to know that the deceased was taken to Durga Nursing Home from where she was shifted to BMC Hospital where she was declared dead. She narrates that when she was at the BMC Hospital she had seen dead body of the deceased and noticed injuries on various parts of the body of the deceased. Since PW No. 1 suspected that she was beaten up by the Applicant and the injuries on her body were due to the assault by the Applicant, she lodged an FIR. PW No. 4 is also a relevant witness, since, he states that on 19.08.2019, the Applicant brought the deceased to V N Desai Hospital, where he was working as CMO. Upon examination, he found that she was brought dead. He noticed injuries to her thighs, chest and arms. Upon asking the Applicant, he did not give any satisfactory answer, hence, PW No. 4 called the Police and sent the body for post mortem. It is also a matter of record that PW No. 5, the post mortem doctor has opined that the cause of death is cerebral compression as a result of blunt trauma with evidence of multiple contusions all over her body. He has deposed that the injuries were caused 4-6 days prior to the death, which is in consonance with the evidence of PW Nos. 1 and 2. He also deposes that the injuries are

possible due to human fist or pushing the person on any hard object like a wall or floor. Taking a conspectus of all the aforesaid facts and the presumption envisaged u/s 106 of the Indian Evidence Act, in conjunction with the fact that the Applicant has failed to provide any explanation to the fact that the death of the deceased has happened at the time when he was admittedly with the deceased, there exists *prima facie* incriminating material against the Applicant. Dealing with the judgment of ***Shivaji Chintappa Patil*** (*supra*) relied upon by the Ld. Counsel for the Applicant, *prima facie*, we observe that the evidence on record is sufficient to establish that the prosecution has discharged the primary burden of proving its case and thereby necessitating the invocation of Section 106 of the Evidence Act. Needless to state that whether or not the said burden of proof has been rebutted by the Applicant or not is an issue which can be decided at the stage of appreciation of evidence in the Appeal.

8. In the light of the aforesaid discussion, we find that this is not a fit case to grant bail to the Applicant and suspend his sentence pending Appeal. Consequently, the Application for bail and suspension of sentence is rejected and disposed of accordingly.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.