

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1030 OF 2015
IN
CRIMINAL APPEAL NO. 207 OF 2015

Subhash s/o Chainsing Jarwal,
Age : 24 years, Occu. Agri.,
R/o Jodwadi, Taluka and
District Aurangabad

APPLICANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. N.S. Ghanekar, Advocate for the applicant
Mr. V.P. Kadam, A.P.P. for the respondent-State
Mr. B.S. Chondekar, Advocate to assist the A.P.P.

CORAM : M.T. JOSHI, J.

DATE : 24/07/2015

ORAL ORDER :

1. Heard both sides.
2. The present applicant/appellant, who is convicted by the learned Additional Sessions Judge, Aurangabad, vide judgement and order dated 31st January, 2015 in Sessions Case No. 229 of 2013 for the offences punishable under section 306 and 498A of the I.P. Code and sentenced to suffer rigorous imprisonment for a

period of seven years and three years, respectively with direction to pay fine amount, is praying for suspension of the substantive sentences during pendency of the criminal appeal filed by him in this court and for his release on bail.

. The applicant/appellant is behind the bars since 13th March, 2013.

3. In fact, the applicant/appellant was charged for the offence punishable under section 302 of the I.P. Code. The learned Sessions Judge, however, did not place reliance over the dying declaration at Exhibit-33 wherein it was stated that the present applicant has set the deceased on fire. However, at the time of delivery of the judgement, the learned Sessions Judge came to the conclusion that it was a case of suicide due to the cruelty at the hands of the present applicant and therefore, the conviction, as detailed supra, came to be recorded.

4. Mr. N.S. Ghanekar, learned counsel for the applicant, submitted that alternate charge could not have been foisted at the time of delivery of the

judgement. Once the dying declaration (Exh-33) was disbelieved by the learned Sessions Judge, there was no occasion for him to find out as to whether there was any abetment to commission of suicide as it was not the case of the prosecution. Mr. Ghanekar, in the alternative, submitted that the applicant is behind the bars for a considerable period. The dying declaration at Exhibit-33 is disbelieved by the learned Sessions Judge for the salient feature that though the police sub-inspector, who had allegedly recorded the same as well as the Medical Officer in whose presence, the dying declaration (Exh-33) was recorded, have deposed that only two of them were present at the time of recording of dying declaration, in fact, the said dying declaration is not in the handwriting of the said police sub-inspector PW6. In these circumstances, Mr. Ghanekar prayed that the applicant be released on bail by suspending the substantive sentences awarded to him.

5. Learned A.P.P. as well as learned counsel assisting to A.P.P., however, opposed the application. It was submitted that during trial, one panch witness was threatened by the present applicant and therefore,

complaint-cum-application in this regard was filed in the sessions court. It was further submitted that in fact, the learned trial court ought to have placed reliance on the dying declaration at Exhibit-33 as the person who had recorded the dying declaration, is not required to be examined.

6. Upon considering the overall facts on record, that the present applicant is behind the bars for a period of more than three years, that at this stage we have reasoning from the learned Sessions Judge that the dying declaration at Exhibit-33 is not reliable, without making further comment on merit of the case, in my view, the substantive sentences need to be suspended and the applicant needs to be released on bail. Hence the following order :-

7. The substantive sentences awarded to the present applicant/appellant are hereby suspended till the disposal of the criminal appeal filed by the applicant in this court.

8. The fine amount is already deposited by the

applicant, as submitted by the learned counsel for the applicant. In the circumstances, the applicant/appellant be released on bail on his executing P.R. bond in the sum of Rs. 30,000/- (rupees thirty thousand) and also upon furnishing surety in the like amount.

. The application accordingly stands allowed and disposed of.

[M.T. JOSHI]
JUDGE

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