

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

**CRIMINAL APPLICATION NO.3716 OF 2015
IN
CRIMINAL APPEAL NO.516 OF 2015**

Sk.Chandpasha S/o Sk.Basheer,
Aged 45 years, Occ.Auto Driver,
R/o Parbhani at present
Asara Nagar,Nanded,
Tq. and Dist.Nanded.
(At present in jail) ... Applicant.

Versus

The State of Maharashtra,
through Police Station Nanal
Peth, Parbhani, Tq. And
Dist.Parbhani. ... Respondent.

...

Mr.G.G.Kadam, advocate for the applicant.
Mr.S.P.Deshmukh, A.P.P for the State.

...

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 24.11.2015.

PER COURT :

1. Heard.

2. This is an application seeking suspension of sentence. The applicant is convicted for an offence punishable U/s 302 of the I.P.C and sentenced to suffer imprisonment for life. The appeal is admitted.

3. Mr.Kadam, learned counsel submits that during the trial, the applicant was on bail. The appeal will take its own time. The evidence is required to be reappreciated by this Court. The Sessions Court while convicting the applicant had relied on the dying declaration. The said dying declaration is recorded by the Police Officer. The same does not inspire any confidence. Even the Doctor who has put endorsement has said that the deceased at the relevant time was gasping for breath. The learned counsel submits that P.W.3 is said to be eye witness, whose statement is recorded after 26 days. No explanation is forthcoming in this regard. According to the learned counsel, the case of the prosecution is that the accused himself went to the Police Station with knife and confessed that he has murdered the deceased Salimkhan. The said

statement is not admissible. Another witness who is said to be a chance witness and present in the Police Station at the relevant time turned away from the said statement. According to the learned counsel, there are various anomalies in the judgment. The applicant has every hope of success, as such the applicant be released on bail.

4. Mr.Deshmukh, learned A.P.P. Opposes the application and submits that the case is based on the evidence of eye witness and the dying declaration. So also the other evidence corroborates to the commission of offence by the accused.

5. We have considered the judgment, so also the documents. No doubt, the evidence will have to be reappreciated by the Court at the final disposal of the appeal. We are considering the application for suspension of sentence. The eye witness to the incident has deposed before the Court and has supported the case of the prosecution. In fact, the deceased and the

accused are related. So it is no gain, saying that the said eye witness is relative of deceased. The motive is also considered by the Sessions Court. The dying declaration and the evidence of eye witnesses are considered. The offence is committed in broad day light. As such the dispute about identity would also not be there. It has been observed by the Sessions Court that the medical evidence supports ocular evidence of eye witness P.W.3. So also the inquest panchanama supports the number of injuries stated by the eye witness.

6. The dying declaration is recorded within 15 minutes prior to the death of deceased. The dying declaration contains the endorsement of the Doctor.

7. Considering the aforesaid aspects, the request of the present applicant for suspension of the sentence can not be considered. The Criminal Application is rejected. However, the

hearing of the appeal is expedited.

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

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