

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

**CRIMINAL APPLICATION NO. 3845 OF 2015
IN
CRIMINAL APPEAL NO.528 OF 2015**

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UMESH S/O. MADAN CHOUDHARY
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. V.D.Salunke
APP for Respondent/State: Mr. A.V. Deshmukh.

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**CORAM : S.S. SHINDE & A.M.BADAR, JJ.
Dated: August 28, 2015**

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PER COURT: [Per A.M.Badar, J.]

1. This is an Application under Section 389 of Criminal Procedure Code in an appeal challenging the Judgment and Order passed by the learned Additional Sessions Judge, Majalgaon in Sessions Case No.20/2014, thereby convicting the Applicant / Accused for the offence punishable under Section 302 of Indian Penal Code, 1860.

2. Heard the learned counsel for the Applicant / Accused as well as learned APP for the Respondent – State.

3. The Applicant / Accused was charged for the offence punishable under Section 302 of Indian Penal Code, 1860

with an accusation that on 15.01.2014 he committed murder of Sitaram Nirmal @ Chadar at village Khalwat-Nimgaon, Taluka Wadwani, District Beed.

4. The entire case of the prosecution is resting on the circumstantial evidence. Motive is attributed to the Applicant / Accused for commission of murder of Sitaram Nirmal. It is the case of the prosecution that about 10-12 Years back, father of the Applicant / Accused was murdered by the said Sitaram Nirmal and after coming out of jail, the accused was giving threats to said Sitaram.

5. In the case where evidence is of circumstantial nature, the circumstances from which conclusion of guilt is to be drawn, needs to be firmly established. All the facts so established should unerringly and consistently point out that in all human probability, it was the accused and none else who had committed alleged offence.

6. In the case in hand, the informant Dnyaneshwar Sitaram Nirmal, who attributed motive to the Applicant has turned hostile. That apart the incident of the commission of murder of the father of the Applicant / Accused took place more than a decade earlier.

7. The next circumstance relied by the prosecution is seizure of clothes of Applicant / Accused, which were found stained with blood. However, blood group of the

blood appearing on those clothes could not be determined in the Chemical Analysis.

8. The prosecution has also adduced evidence of the recovery of 'Koyta' at the instance of confessional statement of the Applicant / Accused. However, that recovery was from the open ground.

9. These are the circumstances on which the conviction of the Applicant / Accused is based. He was on bail throughout the trial. Considering this nature of evidence against them, we are of the considered view that, liberty of the Applicant / Accused needs to be protected during pendency of the Appeal and hence the order:

ORDER

1] Application is allowed. The substantive sentence of imprisonment imposed on the Applicant / Accused is suspended during pendency of the Appeal. The Applicant / Accused is directed to be released on bail on executing P.R. bond of Rs.5,000/- and furnishing surety in the like amount.

[A.M.BADAR, J.]

[S.S. SHINDE, J.]