

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

**CRIMINAL APPLICATION NO. 3940 OF 2015
IN
CRIMINAL APPEAL NO. 545 OF 2015**

**DURGABAI W/O RAVINDRA CHAVAN
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Petitioner : Mr. Ambar S. Barlota
APP for Respondent/State : Miss R. P. Gaur
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 30th NOVEMBER, 2015

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PER COURT :-

1. The present applicant is prosecuted for offence punishable under Section 302 of I.P.C. and is convicted for the said offence and sentenced to suffer rigorous imprisonment for life. The appeal filed by the applicant is admitted by this Court. The present application is seeking suspension of sentence.

2. Mr. Barlota, learned counsel submits that the applicant, during trial, was on bail. Applicant is the step mother of the deceased. There is no evidence which would prove beyond reasonable doubt that it is the present applicant who is the cause of death of the deceased. The learned counsel submits that prosecution has miserably failed to prove that the applicant has strangled the deceased who is her step son. There is no evidence to that effect. The whole case is based on

circumstantial evidence. According the learned counsel, the applicant has two children of tender age and one child is staying with her in jail.

3. The learned APP submits that PW6 is the land-lady of the house where the present applicant and her husband used to reside. In her evidence, it has been brought on record that on the said fateful night, at about 8 to 8:30 p.m., deceased was brought to the house of applicant and her husband by the grandfather of deceased. Medical evidence also shows that the deceased died due to strangulation. The other evidence also shows that the applicant used to ill-treat the deceased. She used to beat the deceased and tie him to the cot. According to the learned APP, the applicant is rightly convicted and should not be released on bail.

4. We have considered the submissions. The whole case is based on circumstantial evidence. Under the staircase, there was a water tank. The deceased was seven years old child. His body was found in the water tank at about 3 to 4 a.m. Medical evidence shows strangulation marks. The evidence will have to be re-appreciated at the time of final hearing of the appeal. The applicant was on bail during trial.

5. Upon scanning evidence and the judgment of the Sessions Court, it transpires that the applicant being a step mother, the finger is pointed to her on the ground that she disliked the deceased. At the time when

the body was found, the applicant and her husband, alongwith their other two children, were in the house. Finger is pointed towards the applicant only based on circumstantial evidence and her relationship, being step mother of the deceased.

6. As stated above, evidence will have to be re-appreciated. However, *prima facie*, we feel that the applicant can be released on bail pending the appeal considering the fact that there is no eye witness and the whole case is based on circumstantial evidence, based on the evidence that the applicant used to dislike the deceased. Considering the above, the substantive sentence dated 06.07.2015 passed by the learned Additional Sessions Judge-4, Aurangabad in Sessions Case No. 72 of 2011 is suspended and the applicant is released on bail pending hearing and final disposal of Criminal Appeal No. 545 of 2015, on furnishing P.R. bond of Rs.20,000/- (Rupees Twenty Thousand only) with one surety of like amount.

7. The criminal application is accordingly disposed of.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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