

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2 OF 2015
IN
CRIMINAL APPEAL NO. 33 OF 2015

1. Mulchand Changumal Jethwani)
2. Deepa Mulchand Jethwani)
3. Jitendra Mulchand Jethwani).. Applicants
(Orig. accused)

vs.

The State of Maharashtra ... Respondents

Mr.Girish Kulkarni i/b. Mr. M.G.Shukla, for the applicants.

Mrs.P.P.Shinde, APP, for the respondent-State.

Mr. Swapnil Ambure for the original complainant.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 5th February, 2015.

P.C.

Heard. This is an application under Section 389 of the Code of Criminal Procedure, 1973. The applicants are seeking suspension of substantive sentence imposed upon them.

2. At the threshold, the learned counsel for the applicants submits that he would not press for the application filed by applicant No.3 for the time being. He prays that he may be granted liberty to mention the matter for final hearing

after the preparation of Paper-book duly verified by the office. The prayer is granted in the interest of justice.

3. Applicant Nos. 1 and 2 herein are convicted for the offence punishable under Section 306 of Indian Penal Code and sentenced to suffer R.I. for seven years and fine of Rs.1,000/- each in default further R.I. For one month. They are also convicted for the offence punishable under Section 498A of IPC and are sentenced to suffer R.I. for three years and fine of Rs.1,000/- each in default R.I. for one month by the Addl. Sessions Judge, City Civil & Sessions Court, Greater Mumbai, vide judgment and order dated 20.12.2014 in Sessions Case No. 71 of 2012.

4. Applicant Nos. 1 and 2 herein happen to be the father-in-law and mother-in-law of deceased Nishi. It is the case of the prosecution that the son of the present applicant Nos. 1 and 2 was married to Nishi on 7.5.2009. It was a love marriage. Initially, the said marriage was disapproved by the present applicant Nos. 1 and 2. However, subsequently, since their son had insisted upon marrying Nishi, they had agreed to the said marriage. It is the case of the prosecution that Nishi was not welcomed in the said house. That she was harassed and ill-treated. That they had demanded golden ornaments and other

valuables from the parents of Nishi. The prosecution witnesses are mostly the relatives of Nishi who have stated that there had been a demand of dowry by the applicants.

5. The learned APP submits that there is also evidence on record to show that the present applicant Nos. 1 and 2 had taunted Nishi by saying that they would have got a better proposal for their son and that they wanted him to perform a second marriage with some other beautiful and rich girl. It prima facie appears that the applicants could be held liable for the offence punishable under Section 498A of IPC. Charge was framed against the applicants for the offences punishable under Sections 302 and 304B of Indian Penal Code. However, they are acquitted of the said charges and are convicted for offence under Section 306 IPC. The learned counsel for the complainant submits that in the course of recording substantive evidence, the prosecution had adduced evidence to show that the applicants had abetted the commission of suicide. The investigation was carried in the wrong direction and, therefore, there is no sufficient evidence to indicate that the present applicants had abetted the commission of suicide by their daughter-in-law Nishi.

6. Heard the learned counsel for the original complainant. The learned

counsel fairly agrees that the investigation was carried out in the direction of establishing a case under Sections 302 and 304B of IPC. However, according to him, the accused are not entitled to any benefit for the lapse on the part of the investigation.

7. Be that as it may, The learned counsel for the applicants submits that the applicants have been sentenced to a substantive sentence of three years for the offence punishable under Section 498A of IPC. That the applicants were on bail during the pendency of the trial and have not committed breach of any conditions imposed upon them. The learned counsel further submits that the appeal is not likely to be heard in the near future. He has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130** for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

8. For the foregoing reasons, the applicant Nos. 1 and 2 deserve to be enlarged on bail during the pendency of the appeal.

ORDER

- (i) The application as far as applicant No.3 is concerned, is dismissed as withdrawn.
- (ii) The substantive sentence imposed upon the applicant Nos. 1 and 2 is hereby suspended and they be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.
- (iii) The applicant Nos. 1 and 2 be released on cash bail which shall remain in force for a period of four weeks. Within four weeks, the applicants shall furnish P.R. Bonds and obtain regular bail.
- (iv) The applicant Nos. 1 and 2 shall furnish fresh bond within a period of four weeks from the date of this order, failing which the order granting bail stands cancelled.
- (v) The applicant Nos. 1 and 2 shall report to the concerned Sessions Court once in six months on the date specified by the Sessions Court. Upon failure to attend on two consecutive dates, the concerned Sessions Court shall inform the High Court forthwith and take appropriate action.

Application is allowed and disposed of in the above terms.

Parties to act on the authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)