

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 366 OF 2015
IN
CRIMINAL APPEAL NO. 33 OF 2015

Jitendra Mulchand Jethwani. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Girish Kulkarni a/w. Mr. Maitreya G. Shukla, advocate for
Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 26, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973. The applicant herein is seeking suspension of
substantive sentence imposed upon him in Sessions Case No. 71 of

2012 decided by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai vide Judgment and Order dated 20/12/2014.

3 The applicant herein was tried for an offence punishable under Section 302 of the Indian Penal Code alongwith his parents. The learned Sessions Judge has acquitted all the accused of the offence punishable under Section 302 and 304B of the Indian Penal Code and has convicted all the accused for offence punishable under Section 306 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine in the sum of Rs. 1000/- each, in default of payment of fine they shall undergo further R.I. for one month. The applicant alongwith others are also convicted for offence punishable under Section 498A of the Indian Penal Code and sentenced to suffer R.I. for three years and to pay fine of Rs. 1000/-each in default of payment of fine, to undergo further R.I. for one month.

4 It is the case of the prosecution that the applicant herein was married to Nishi on 7/5/2009. The said marriage was a love

marriage. Initially, said marriage was disapproved by the parents of the applicant. However, since present applicant had insisted and persisted upon his parents to accept Nishi, they accepted Nishi as their daughter-in-law. According to the prosecution, wife (since deceased) of the applicant was not welcomed in the said house, there was a demand of dowry, golden ornaments and valuables from the parents of Nishi. It is the prosecution that on 25/6/2010, the father of Nishi had received phone call from Nishi informing him that she could no more tolerate ill-treatment meted out to her in her matrimonial house. Similar phone call was received on 26/6/2010. On 27/6/2010 the applicant had asked the informant as to whether she had come to his house. Her brother was requested to enquire about Nishi. Bhavesh had been to the house of Nishi and found that she had died by falling on the ground floor from the balcony of her house. On the basis of the report filed by father of Nishi Crime No. 268 of 2010 was registered against the present applicant and others and they were charge-sheeted and charged for offence punishable under Section 302 read with section 34 of the Indian Penal Code.

5 Upon recording of substantial evidence, the learned Sessions Judge had arrived at a conclusion that Nishi had not died homicidal death, but had died suicidal death. Hence, it was concluded that due to ill-treatment meted out to her in her matrimonial house, she had jumped from the balcony of her house and had committed suicide.

6 Learned Counsel appearing for the applicant submits that learned Sessions Judge has not appreciated the evidence on record in its proper perspective and has arrived at an erroneous conclusion. According to the learned Counsel for the applicant, in fact it was not a suicidal death, but an accidental death.

7 Be that as it may, after conviction the applicant has been in jail for more than 6 months. Reliance can be placed upon the Judgment of the 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. At present due to pendency of old jail appeals, it is not possible for the Court to hear the appeal on merits within a short span and hence, the applicant deserves grant of suspension of substantive sentence. The applicant was on bail during the pendency of the trial and has not committed breach of any conditions imposed upon him. The fine amount has been paid. In the circumstance, the applicant deserves grant of bail.

8 Hence following order is passed.

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended and the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.

(iii) The applicant be enlarged on cash bail for a period of 4 weeks, during which he shall comply with necessary procedure.

(iv) The applicant shall report to the Sessions Court, Greater Mumbai once in 3 month during the pendency of this appeal on the date fixed by the concerned Court. Upon failure to report on two consecutive dates by the applicant, the prosecution is at liberty to move for cancellation of bail.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)