

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1581 OF 2014
IN
CRIMINAL APPEAL NO. 648 OF 2014

Santosh Bhaskar Derle

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. A. P. Mundargi Senior Advocate a/w Mr. Amol Patankar for Applicant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 22, 2015

PC :

1) Heard. This is an application under section 389 of Code of Criminal Procedure, 1973. Applicant herein is seeking suspension of substantive sentence. Applicant herein is convicted for offence punishable under section 304-B of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 8 years and also to pay fine of Rs. 2,000/- i.d. To suffer rigorous imprisonment for a period of three months. Applicant herein is also convicted for offence punishable under section 498 (A) of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of three years and also to pay fine of Rs. 1,000/- i.d. to suffer rigorous imprisonment for a period

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of two months. He is also convicted for offence punishable under section 323 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of six months and also to pay fine of Rs. 500/- i.d. to suffer simple imprisonment for a period of one month in Sessions Case No. 3 of 2008 by Additional Sessions Judge, Niphad vide Judgment and Order dated 22/07/2014.

2) Learned senior counsel for the applicant submits that evidence in the present case is in the nature of two dying declarations. First dying declaration is at exhibit 38 which is recorded in question and answer form by Nayab Tahsildar. In the said dying declaration, the deponent has disclosed that on 27/07/2007, her husband i.e. present applicant was assaulting her throughout the day. She was meted out with mental harassment at the hands of her mother-in-law and therefore, she set herself ablaze. Her husband had taken her to the hospital. In the first dying declaration, there is no allegation that she was meted out with cruelty, ill-treatment or harassment on account of demand of dowry. The said dying declaration was recorded on 21/07/2007.

3) Police officer attached to Byculla Police Station recorded the second statement of the deceased on 27/07/2007, wherein she alleged that she had got married to the applicant on 17/04/2013. After one year of marriage, her husband was demanding monetary help from her father for being transferred, for which he needed money. She was being coerced to fetch money from her father and was also being threatened of dire consequences. On 20/07/2007, her husband was assaulting her throughout the day and therefore, she has set herself ablaze.

4) Learned Senior Counsel rightly submits that it was only after seven days that she had changed her version and given reason for ill-treatment and harassment. The possibility of tutoring cannot be ruled out. She died on 26/08/2007. Applicant was on bail during the pendency of trial i.e. from 02/05/2008 till 19/07/2014. He had not committed breach of any conditions.

5) In the case of **Bhagwan Shinde V/s State of Gujarat**, Criminal Appeal No. 554 of 1999, Judgment and Order dated 12/05/1999, Hon'ble Apex Court has observed that:

“When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

6) Learned counsel for the applicant submits that the sentence imposed upon the applicant is a short term sentence and the appeal is not likely to be heard in the near future and therefore, prays for bail.

7) Taking into consideration the nature of the evidence adduced by the prosecution, coupled with the fact that applicant was on bail during the pendency of trial and now has been in jail since 14 months, this Court is inclined to enlarge the applicant on bail. Moreover, sentence is of 8 years for offence punishable under section 304 (B) of Indian Penal Code.

ORDER

- (i) Application is allowed.
- (ii) The substantive sentence imposed upon the applicant is hereby suspended and applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned Court once in six months, during the pendency of the appeal on the date specified by the concerned Court. Upon failure to attend on two consecutive dates, the concerned Court shall inform the High Court forthwith and take appropriate action.

Application is allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)