

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD

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| Office Notes, Office<br>Memoranda of Coram,<br>appearances, Court's<br>orders or directions<br>and Registrar's orders | Court's or Judge's orders |
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**CRIMINAL APPLICATION NO. 217 OF 2016**  
**IN APEAL/10/2016 WITH APEAL/10/2016**

TANAJI S/O VENKAT CHENDKE  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for the applicant : Mr. S.S. Panale  
APP for Respondent/State : Mr.S.W. Mundhe

...  
**CORAM: S.S.SHINDE & V.K. JADHAV, JJ.**  
**Dated: October 01, 2016**

...

By this Criminal Application, the applicant-accused seeking suspension of sentence of imprisonment passed by the Sessions Judge, Latur vide judgment and order dated 22nd December, 2015 passed in Sessions Case No.55 of 2014. The Sessions Judge by the impugned judgment and order dated 22nd December, 2015 convicted the applicant-accused for the offence punishable under Section 302 of I.P.C. and sentenced to suffer imprisonment for life and pay fine of Rs.2,000/-, in

default to suffer rigorous imprisonment for six months. So also the applicant-accused is convicted for the offence punishable under Section 201 of the I.P.C. and sentenced to suffer rigorous imprisonment for three years and pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for three months.

2. The learned counsel appearing for the applicant submits that there is no chain of circumstantial evidence against the applicant-accused. The learned counsel submits that the Sessions Judge has believed PW-1 Police Patil of the village before whom the applicant-accused has made extra-judicial confession. The learned counsel further submits that the extra-judicial confession before the Police Officer is not admissible in evidence. The learned counsel further submits that even the dead body alleged to be of deceased Sangita was not in identifiable condition and merely on the basis of certain averments in the panchanama, it is stated that dead body found was of deceased Sangita. Furthermore, there is only excavation panchanama Exh-52 which was drawn during the course of investigation and the same

is proved by the prosecution before the Court below. However, the said dead body was not recovered at the instance of the applicant-accused by drawing panchanama as per the provisions of Section 27 of the Indian Evidence Act. The learned counsel further submits that the important witness Indrajit Jadhav, who is on the point of 'last seen together' was not examined by the prosecution before the Court below. Even the CCTV footage alleged to have installed in Bhairavnath Temple is also not duly proved by the prosecution.

3. The learned A.P.P. submits that there is chain of circumstantial evidence against the applicant-accused and the applicant-accused is not entitled to be released on bail.

4. On careful perusal of the impugned judgment and order of conviction, it appears that the circumstances brought before the Court below are not having definite tendency to point out unerringly guilt of the accused. Furthermore, the dead body alleged to be of deceased Sangita was not recovered at the instance of the

applicant-accused. Furthermore, the said dead body was not in identifiable condition. There is missing link in circumstantial evidence, as the prosecution has not examined the said Indrajit Jadhav, who is on the point of 'last seen together'.

5. In that view of the matter, we are inclined to release the applicant-accused on bail. Hence the following order:-

**ORDER**

(i) The application is hereby allowed.

(ii) Applicant Tanaji Venkat Chendke be released on bail on his furnishing P.R. bond of Rs. 20,000/- (Rs. Twenty Thousand Only) with one surety of the like amount, before trial Court. The substantive sentence is suspended.

(iii) The learned counsel appearing for the applicant-accused assures this Court that as and when the appeal would be listed for hearing, the applicant-accused will remain present on that date before this Court.

(iv) The Registry of this Court shall send

original Record and Proceedings to the Registry of Sessions Judge, Latur. Upon receiving the original record and proceedings by the Registry of the Sessions Judge, Latur, the Registry of concerned Court shall prepare the paper book and send it back along with original record and proceedings, as expeditiously as possible, and preferably within three months from receipt of the original record and proceedings.

(v) List the Criminal Appeal for further hearing on 6<sup>th</sup> February, 2017.

**(V.K. JADHAV, J)**

**(S.S. SHINDE, J)**

sga/