

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

**CRIMINAL APPLICATION NO. 2409 OF 2016
IN APEAL/290/2016**

**REKHABAI w/o INDARRAO GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Shri Gangakhedkar Shailendra S.
APP for Respondent/ State : Shri K.S.Patil.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Per Court:

1 The Applicant has moved this application for seeking bail in view of Criminal Appeal No.290/2016 having been admitted by this Court.

2 The contention is that the Applicant has been held guilty of the offence punishable under Section 304 (Part-II) of the Indian Penal Code and is directed to suffer rigorous imprisonment for five years. Criminal Appeal No.290/2016 was heard by this Court on 27.04.2016 and the same has been admitted.

3 The Applicant submits that the appeal which is admitted by

this Court has been preferred in 2016 after the judgment and order dated 21.04.2016 was passed in Sessions Case No.125/2012. Since the appeal has been admitted, it would take years for the said appeal to be decided. The sentence is for a period of five years and if the appeal takes a longer time, the Applicant would remain behind the bars.

4 Shri Gangakhedkar, learned Advocate for the Applicant, submits that the Applicant has a good case and has every hope that he would succeed in the appeal which has been admitted by this Court. Two Dying Declarations were recorded by two different persons in the middle of the night at the same time and practically in overlapping time frames, thereby lending no credibility to the said dying declarations. He further submits that the conclusions arrived at by the learned Trial Court are unsustainable and the Applicant has every hope of being acquitted.

5 The Applicant has placed reliance upon the judgments of the Honourable Supreme Court in the matters of *Bhagwan Rama Shinde Gosai vs. State of Gujarat*, **AIR 1999 SC 1859** and *Kiran Kumar vs. State of M.P.*, **AIR 2001 SCW 5130**.

6 The learned APP has opposed this application. The contention is that the appeal which is admitted could be expedited and the hearing

on the appeal could be held within the period of one year. Until the decision in the appeal, the Applicant deserves to remain behind the bars and this application be rejected.

7 I have considered the submissions of the learned Advocates.

8 The criminal appeal filed by the Applicant has been admitted by this Court. It is informed that presently similar appeals preferred in the years 2005 and 2006 have been lined up for final hearing. The appeal filed by the Applicant having been lodged in 2016, if taken up for final hearing in the order of it's filing, may not be heard for some years.

9 The Honourable Supreme Court in the matter of *Bhagwan Rama Shinde Gosai* (supra) has held that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances. It is also concluded that when the sentence is of life imprisonment, the consideration for suspension of sentence could be of a different approach. Valuable right of appeal will have to be exercised and if the same is not done within a short period, the Court must bestow special concern in the matters of suspending the sentence.

10 In the matter of *Kiran Kumar (supra)*, the Honourable Supreme Court placed reliance upon the judgment of the Court in *Bhagwan Rama Shinde (supra)* and concluded that if the short term sentence is allowed to run out during the pendency of appeal, the appeal itself will become, for all practical purposes, infructuous insofar as the appellant is concerned. Only if the Court is convinced that as a consequence of suspending the sentence, it would endanger the society or create some difficulty, the short term sentence may not be suspended.

11 In the instant case, the facts are that the Applicant is the second wife of Indarrao Gaikwad. She quarreled with his first wife Sunita. Both these wives were living together with the husband under a single roof. On account of the domestic quarrel between two wives, the Applicant is said to have poured kerosene on the first wife and set her on fire, in a fit of rage.

12 In my view, if the Applicant is released on bail during the pendency of the appeal, there is no possibility of the Applicant creating any similar situation or difficulty or endanger the society.

13 As such, considering the view taken by the Honourable Apex

Court in the cases of *Bhagwan Rama Shinde and Kiran Kumar (supra)*, this Criminal Application is allowed in terms of prayer clause (B), which reads as under:-

“(B) By an order of this Hon'ble Court, the applicant may kindly be released on bail during pending hearing and final disposal of the Criminal Appeal whereby challenge is raised against the judgment and order passed in Sessions Case No.125/2012 by the Sessions Judge at Jalna on 21.04.2016, convicting the applicant for the offence punishable under Section 304 Part II of I.P.C. and sentence to suffer rigorous imprisonment for five years.”

14 Consequentially, the Applicant shall be released on bail till the final hearing in Criminal Appeal No.290/2016 on the following conditions:-

- (a) The Applicant shall report to the Ghansawangi Police Station, District Jalna in between 11:00 am to 01:00 pm on the 15th day of each month beginning from the month of July, 2016.
- (b) The attendance of the Applicant shall be recorded in the Station House Diary and the signature of the Applicant shall be obtained to evidence her attendance.
- (c) The Applicant shall execute the P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with a S.B. of a like amount.
- (d) The Applicant shall ensure that no hostility is expressed

towards the two sons and the two daughters of the deceased first wife.

- (e) Failure of the Applicant in attending the Police Station as directed above on two occasions, either consecutive or otherwise, as well as violation of any of the above conditions, shall be a ground for cancellation of bail.

kps

(RAVINDRA V. GHUGE, J.)