

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

**CRIMINAL APPLICATION NO. 4506 OF 2016
IN
CRIMINAL APEAL NO. 468 OF 2016**

DNYANESHWAR S/O CHHAGAN PATIL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr S S Jadhav
APP for Respondents: Mr S Y Mahajan

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**CORAM : S.S. SHINDE & V.K. JADHAV, JJ.
Dated: December 14, 2016**

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PER COURT :- (Per V.K.Jadhav, J.)

1. By this application, the applicant-original accused seeks suspension of the substantive sentence passed by the learned District Judge-2 and Additional Sessions Judge, Amalner in Sessions Case No.38/2014 and further getting his release on bail.

2. The learned counsel for the applicant-accused submits that, the prosecution case entirely rests upon the circumstantial evidence. Learned counsel submits that, the prosecution may have some case on the point of motive, however, there is no further chain of

circumstantial evidence unerringly point out the guilt of the accused. Learned counsel submits that, circumstances brought on record by the prosecution are having no definite tendency to point out the guilt of the applicant-accused. Learned counsel submits that, so far as circumstances of extra judicial confession alleged to have been made by the accused to P.W. 2 is concerned, P.W. 2 Kalpana has omitted that part in her statement recorded by the police and she has materially improved her story before the Court. Learned counsel further submits that, even PW 2 Kalpana was confronted with the portion marked 'A' of her statement recorded on 2.5.2014 wherein she had stated before the police that, she had no suspicion against anybody so far as homicidal death of her father-in-law is concerned, she denied to have stated the same. Learned counsel for the applicant-accused submits that the applicant-accused was on bail during the course of the trial so also he has already deposited the fine amount.

3. The learned APP submits that the applicant-accused has voluntarily made extra judicial confession

to P.W. 2 Kalpana and that P.W. 2 Kalpana had disclosed the same to the police in her subsequent statement recorded on 5.5.2014. The learned APP submits that, further the accused was found near the field of the deceased and this material circumstance goes against the applicant-accused. Learned A.P.P. submits that, the prosecution has fully established the motive in this case and there is recovery of weapon at the instance of the applicant-accused.

4. On careful perusal of the Record and Proceedings, we find that the prosecution case entirely rests upon circumstantial evidence. It appears from the prosecution evidence that, the prosecution has established motive to some extent and when the prosecution case rests upon circumstantial evidence, motive plays a great role.

5. P.W. 2 Kalpana has omitted to state in her police statement recorded immediately after the incident that the applicant-accused had made extra judicial confession to her on phone. Even, P.W. 2 Kalpana when confronted with portion marked 'A' of her statement,

wherein she had stated before the police that, she had no knowledge as to how deceased (her father-in-law) met with homicidal death, she denied to have stated portion marked 'A' of her statement before the police. Prosecution also relies upon circumstances of recovery of weapon at the instance of applicant-accused. However, we do not find any further evidence so as to connect said recovery of the weapon to the alleged crime. There are no blood stained clothes of the applicant-accused nor any blood found on the aforesaid weapon recovered at the instance of the applicant-accused. We inclined to release the applicant on bail.

6. In view of the above discussion, we proceed to pass the following order.

ORDER

- I. Criminal Application is hereby allowed.
- II. The substantive part of the sentence passed by the District Judge-2 and Additional Sessions Judge, Amalner dated 18.7.2016 in Sessions Case No.38/2014 under section 302 of Indian Penal Code and thereby sentencing the applicant-

accused to suffer life imprisonment and to pay fine of Rs.20,000/- (Rs. Twenty Thousand), in default to suffer R.I. for Six months is hereby suspended till the disposal of the appeal and the applicant Dnyaneshwar s/o Chhagan Patil be released on bail on his furnishing P.B. of Rs.20,000/- (Rs. Twenty Thousand only) with one solvent surety of the like amount.

III. Bail before the Trial Court.

IV. Humdast allowed.

V. Criminal Application accordingly disposed of.

Sd/-

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

sd/-

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

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aaa/-