

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

CRIMINAL APPLICATION NO.5961 OF 2015 IN
CRIMINAL APPEAL NO.825 OF 2015

Suresh s/o Ananda Jadhav (Mali) ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri C.R. Deshpande, Advocate for applicant
Shri K.S. Hoke Patil, A.P.P. for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 16th June, 2016.

ORAL ORDER :

1. Heard learned counsel for the applicant - original accused. He submits that, the matter arises out of matrimonial dispute. The applicant has been convicted inter alia to suffer rigorous imprisonment of 8 years for offence punishable under Section 306 of the Indian Penal Code. It is stated that, the marriage took place in 1998 and the incident of wife found

hanging occurred in the night of 30.8.2012. It is stated that, the applicant has two daughters and one son. The trial Court wrongly relied much on the evidence of P.W.2 Trupti, the daughter. According to the counsel, the cross-examination of P.W.1 Sharad showed that, Trupti was staying with her maternal uncle since long. She was staying with the uncle since she was in 5th Standard. Even the other daughter Yogita started staying with the uncle since 2009. According to the learned counsel, for such reason the daughter deposed against her own father. The applicant has arguable case in the appeal which may take time and according to counsel, the applicant may be admitted to bail.

2. The learned A.P.P. opposes the application and according to him, it is serious matter and the applicant should not be admitted to bail while the appeal may be expedited.

3. The learned counsel for applicant has submitted across the bar copies of the depositions of various witnesses which are seen. I have gone through the impugned judgment also. The matter is at the stage of admission of appeal. Prima facie what appears from the material available is that the marriage although it was old, evidence shows that, the daughters

were residing with their uncle. The prosecution brought on record evidence to show that, after some years of the marriage, the applicant became heavy drunkard of alcohol, because of which the matrimonial life got disturbed. The evidence is that, due to such addiction, the victim was being beaten. Evidence is that, she was being beaten and was being asked to get money from her parent's place. The learned counsel for the applicant is submitting that the applicant had himself also purchased house in the name of the victim and the allegations that the accused was habituated to drink has no other support except the oral evidence of witnesses. However, I find, in the present matter, other than the oral evidence, there is also complaint which was filed by the victim herself on 28.7.2012 to police, making various allegations against the applicant of consuming liquor every day and physically beating her as well as earlier appellant put kerosene on her and trying to burn her. It is stated that, after such complaint was filed by the victim, there was a compromise. However, the fact remains that, soon thereafter the present incident took place in the night of 30.8.2012, which is just about a month after the complaint filed earlier by the victim. The trial Court has reasoned that the accused never tried to get the custody of his children even after the present incident. The trial

Court has accepted the evidence against the applicant and accused. Looking to the evidence and reasons recorded in judgment and complaint which was filed by the victim about a month before the incident and the fact that there are small children kept with the maternal uncle, it does not appear appropriate at this stage to release the applicant - accused on bail.

4. I make it clear that, my observations relating to the evidence are prima facie and it prima facie appears to me that the conviction is well founded and if the applicant is released on bail, it may create difficulties for the daughters and minor son staying with their uncle.

5. It will be more appropriate to expedite the appeal and to hear the same finally.

6. The application is rejected. The appeal which has been admitted, is expedited.

7. Although earlier it was directed to dispense with the Paper Book, the learned counsel for the appellant and the learned

A.P.P. both agree that it will be more appropriate to get urgently the Paper Book prepared officially looking to the volume of the documents.

8. Let the Paper Book be prepared urgently. The Paper Book should reach this registry by 25th July 2016. The appeal shall be listed thereafter in consultation with counsel for both sides to fix date of hearing finally and to hear the same.

(A.I.S. CHEEMA, J.)

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