

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

CRIMINAL APPLICATION NO. 6209 OF 2016
IN APEAL/163/2016

VIJAY S/O. AMRUT PATIL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Paresh B. Patil.

APP for Respondent : Mr. M. B. Bharaswadkar.

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CORAM : **V. K. JADHAV, J.**

DATE : 17th November, 2016.

ORDER:

. Heard.

2 By this application, the Applicant – original Accused is seeking suspension of the substantive part of the sentence passed by the learned Additional Sessions Judge, Amalner in Sessions Case No.44 of 2013 and further getting released on bail.

3 The learned Additional Sessions Judge, Amalner by judgment and order dated 28th January, 2016, convicted the Applicant – Accused for the offence punishable under Section 306 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.10,000/-, in default Simple Imprisonment for three months. Aggrieved by the same, the Applicant – Accused

has preferred an appeal, which is admitted by this Court.

4 The learned counsel for Applicant submits that Exhibit – 54, which is the dying declaration of deceased Surekha wherein she had alleged that the Applicant – Accused poured kerosene on her person and told her to die. Thereupon she set herself on fire with the help of matchstick. The learned counsel submits on the basis of said dying declaration Exhibit – 54, the learned Additional Sessions Judge has convicted the Applicant as aforesaid. The learned counsel submits that the Applicant – Accused if poured kerosene on the person of deceased Surekha and told her to die, is the only evidence of abetment. In fact, he was intending thereby that deceased Surekha should commit suicide, is a question requires re-appreciation in the appeal preferred before this Court. The learned counsel submits that during the course of the trial, the Applicant – Accused was on bail and he never misused his liberty. The Applicant has fixed place of residence and he is not likely to be absconding. The learned counsel for the Applicant submits that the Applicant has also deposited the fine amount before the Trial Court.

5 The learned APP has strongly resisted the application. The learned APP submits that pouring the kerosene on the person of

deceased Surekha and asking her to die, itself sufficient to constitute abetment defined under the provisions of Section 107 of the Indian Penal Code. The learned APP submits that the application is thus liable to be rejected.

6 On careful perusal of Exhibit – 54 dying declaration of deceased Surekha it appears that the Applicant – Accused poured kerosene on her person and told her to die. The learned counsel for the Applicant – Accused has rightly pointed out that whether by doing so, the Applicant – Accused was intending that deceased Surekha should commit suicide, is the question which requires re-appreciation in the pending appeal before this Court. It is a matter of record that deceased Surekha was the wife of Applicant – Accused for 15 years and that the Applicant – Accused came to be acquitted by the Trial Court for the offence punishable under Section 498-A of the Indian Penal Code. Consequently, the presumption under Section 113-A of the Evidence Act is not attracted in the facts and circumstances of the case. The Applicant – Accused was on bail during the course of trial. In view of this, he is entitled to be released on bail by suspending the substantive part of the sentence. Hence, the following order :

ORDER

- I. The criminal application is hereby allowed.
- II. The substantive part of the sentence passed by the learned Additional Sessions Judge, Amalner in Sessions Case No.44 of 2013, as aforesaid, stands suspended till the disposal of the appeal and till then Applicant – Accused Vijay Amrut Patil be released on bail on furnishing personal bond in the sum of Rs.20,000/- with one solvent surety in the like amount.
- III. Bail before the Trial Court.
- IV. Hamast allowed.
- V. Criminal application stands disposed of.

[V. K. JADHAV, J.]