

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

CRIMINAL APPLICATION NO. 6974 OF 2016
IN APEAL/735/2016

VIJAY S/O BHIMRAO MOKALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. K. F. Shingare.
APP for Respondent : Mr. S. W. Munde.
...

CORAM : **V. K. JADHAV, J.**
DATE : 23rd December, 2016.

P.C.:

. Heard.

2 The learned counsel for the Applicant submits that it appears from the prosecution evidence that there is some evidence about the ill-treatment extended to deceased – Kavita. However, there is no evidence of abetment for commission of suicide of deceased – Kavita. The learned counsel submits that deceased – Kavita died ten years after her marriage and thus the presumption under Section 113-A of the Indian Evidence Act is not attracted in the given set of facts of the case. In absence of availability of said presumption, as per prosecution case, incident on 16th October, 2014 is the only incident, which shows that deceased – Kavita jumped into the well on account

of quarrel with present Applicant and it further appears from the evidence led by prosecution that she jumped into well in the heat of anger. The learned counsel for the Applicant submits that during the course of trial, the Applicant / Accused was on bail and he has deposited the fine amount before the Trial Court.

3 The learned APP has strongly opposed the application on the ground that PW-3 and PW-4, who are the children of present Applicant, have deposed against him and on 16th October, 2014, the present Applicant had severely beaten deceased – Kavita and therefore, she had jumped into well and finished her life.

4 It appears that presumption under Section 113-A of the Indian Evidence Act is not attracted in the facts of the present case. It further appears from the evidence led by the prosecution that on 16th October, 2014, in the heat of anger, deceased – Kavita had jumped into well. Whether the present Applicant / Accused was intending that deceased – Kavita should jump into well and commit suicide, is the question needs re-appreciation in the appeal preferred by the Applicant / Accused. I am inclined to release the Applicant / Accused on bail by suspending the substantive sentence till the disposal of the appeal. 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, Vaijapur dated 19th November, 2016, in Sessions Case No.17 of 2015, stands suspended till the disposal of the appeal and till then Applicant / Accused (Vijay S/o Bhimrao Mokale), 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 is accordingly disposed of.

[V. K. JADHAV, J.]