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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1370 OF 2015
IN
CRIMINAL APPEAL NO.1062 OF 2015.

Rakesh Dattatray Rindhe	 Applicant.
V/s.	
The State of Maharashtra	 Respondent.

Mr. Shriram S. Kulkarni, for the Applicant
Mr. H. J. Dedia, APP for the Respondent-
State.

CORAM : SMT. V. K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 7TH JANUARY 2016.

P.C: [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. Heard learned counsel for the applicant and learned APP.
2. This Application is preferred by original accused seeking the suspension of substantive sentence of imprisonment and his enlargement on bail during pendency of the appeal.
3. The applicant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer

imprisonment for life and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment for one month.

4. The prosecution case stands on the evidence of eye witness P.W. 2 Mallikarnjun, who has deposed about the incident and has stated that in the quarrel ensued between the applicant and the deceased, applicant got annoyed and strangled deceased Prathmesh with his pant belt. When P.W.2 Mallikarnjun tried to intervene, the applicant pushed him back. Then he fell down the deceased Prathmesh and again strangled by belt, pushed him in the ditch and assaulted him with stone on the head. As per P.W.3 Dr. Ajay Taware, who has conducted postmortem, the cause of death was asphyxia due to strangulation with evidence of head injury.

5. According to learned counsel for the applicant, there was neither any motive nor any intention on the part of applicant in making any assault on the deceased. It was a case of sudden quarrel and hence case of applicant at the most can fall under Section 304 part II of the Indian Penal Code. The applicant has already undergone imprisonment of 2 ½ years and

therefore, learned counsel for the applicant submits that the applicant be released on bail during pendency of this appeal.

6. However, in our considered opinion, at this stage, it would not be possible to consider whether the case of the applicant falls under Section 302 or 304 Part I /II especially in the light of the fact that medical evidence of P.W.3 Dr. Taware proves 3 lacerated wounds, multiple abrasions and contusions alongwith ligature marks with corresponding internal injuries. In view thereof, we are not inclined to suspend the substantive sentence of applicant and release him on bail during pendency of the appeal.

7. At this stage request is made by learned counsel for applicant to expedite the hearing of the appeal. Request is accepted. Hence the order.

Order

I) Application for bail stands dismissed.

II) Hearing of the appeal is expedited.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original
signed order.