

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1494 OF 2015

IN

CRIMINAL APPEAL NO.278 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Smt. V.J.Maindad for the Applicant.

Smt. Anamika Malhotra, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 18th July, 2016

P.C.

This is an application for suspension of substantive sentence and for releasing the applicant on bail.

The applicant is convicted under Section 304 (Part-II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5000/-, in default to suffer rigorous imprisonment for six months by the learned Additional Sessions Judge, Pune in Sessions Case No.791/2014 by its Judgment and order dated 4.9.2015.

2) The learned counsel for the applicant submitted that out of the said seven years of substantive sentence imposed upon the applicant he has already undergone two years of sentence. She further submitted that though the charge was framed under Section 302 of the Indian Penal Code, the learned Trial Court has convicted the applicant under Section 304(Part-II) of the Indian Penal Code.

She further submitted that it is the specific defence of the applicant that the deceased committed suicide due to frustration arising out of family problems. She further submitted that the alleged dying declaration recorded by the police has not been accepted by the Trial Court. She therefore, prayed that the applicant may be released on bail.

The learned APP vehemently opposed the application and submitted that there is sufficient evidence on record to sustain the conviction of the applicant under Section 304(Part-II) of the Indian Penal Code.

The evidence on record prima facie reveals that there are material discrepancies in the evidence of P.W. No.1 and 2 to whom the deceased has given the alleged oral dying declaration. It is further to be noted here that the date of incident is 15.8.2014, at the time of admission to the hospital the deceased had suffered 50 to 60% of the burn injuries and the deceased Padmakul Bahadur Thakur succumbed to the injuries on 2.11.2014 i.e. after the gap of about 2.1/2 months.

4) After taking into consideration the evidence available on record, prima facie, I am of the opinion that the applicant is entitled to be released on bail. The substantive sentence imposed upon the applicant is of 7 years rigorous imprisonment. There is no possibility of the appeal being heard on merits in near future. In view of the above, I am of the opinion that the applicant is entitled to be released on bail.

Hence, the following order:-

- a) The applicant be released on bail on his furnishing PR bond of Rs.20,000/- with one or two solvent sureties in the like amount.
- b) After his release from Jail, the applicant shall attend the Trial Court once in three months, on every first Monday of the month between 11.00 a.m. to 2.00 p.m.
- c) Any two consecutive defaults in attending the Trial Court will entitle the prosecution for seeking cancellation of bail of the applicant.
- d) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)