

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

CRIMINAL APPLICATION NO. 1 OF 2017
IN
CRIMINAL APPEAL NO. 1 OF 2017

Pralhad s/o Keshav Bite .. Applicant

Versus

The State of Maharashtra. .. Respondent

.....
Mr Sudarshan J. Salunke, Advocate for the applicant
Mr K. N. Lokhande, APP for respondent/State
.....

**CORAM : VL. ACHLIYA, J.
DATED : 19.01.2017.**

PER COURT :

. The applicant has moved this application seeking suspension of sentence and release of the applicant on bail during the pendency of the appeal.

2. Heard Mr. Sudarshan J. Salunke, learned counsel for the applicant and APP for respondent and further perused the impugned Judgment & Order and the copies of the depositions placed on record.

3. The applicant along with the co accused- Juvenile in conflict with law namely; Bhaskar, were alleged to have committed murder of Radha, the daughter of

applicant and sister of co-accused. On the basis of the complaint lodged by PSI – Ramesh Rupekar (PW9), offence u/s 302, 201 r/w 34 of the IPC registered against the applicant and co-accused. The investigation was conducted. On conclusion of the investigation, the charge-sheet was prepared and filed to prosecute him for offence u/s 302, 201 r/w 34 of the IPC. The co-accused tried separately before the Juvenile Court. In order to prove its case, the prosecution has examined 11 witnesses. On conclusion of trial, the learned Addl. Sessions Judge has convicted the applicant for committing offence punishable u/s 304 Part II of the IPC and sentenced to suffer rigorous imprisonment for seven years and also to pay fine of Rs. 2,000/-. Being aggrieved, the applicant has preferred Appeal on the grounds set out in the appeal.

4. Learned counsel for the applicant has pointed out that the facts of the case of the prosecution itself discloses that the alleged incident was occurred at a spur of moment and on account of the provocation made by the deceased. Most of the witnesses examined by the prosecution have not supported the case of the prosecution. He submits that, the conviction is not sustainable in law as there is no cogent, convincing, reliable & legally sustainable evidence to convict the applicant. He further submits that, the applicant was on bail during the trial and sole earning member in the family. He therefore urged to release the applicant on bail.

5. Learned APP strongly opposed the application with contention that there is cogent, convincing and reliable evidence to connect the applicant with the offence for which he was charged and convicted by the trial Court. He further submits that, looking to the fact that the applicant has committed the murder of his own daughter, the application be rejected.

6. Having appreciated the submissions advanced in the light of the impugned Judgment and the testimony of the witnesses, I am of the view that an arguable case has been made out in Appeal. The learned Additional Sessions Judge has acquitted the applicant for committing offence u/s 302 of the IPC. It has been observed that, the act was not per-mediated and it was occurred in a spur of moment. Having regard to the facts of the case, the evidence on record and further taken into consideration the nature of sentence awarded, I am of the view that the applicant be enlarged on bail. Hence, the following order.

ORDER

- (1) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount.
- (2) Pending disposal of the appeal, the applicant be released on bail on his furnishing bail in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one surety in the like amount, on following conditions.
 - (i) Pending disposal of the appeal, the applicant shall attend Wadwani Police Station, Dist. Beed, on last day of each month.

- (ii) The applicant shall not indulge into any offence of similar nature during the pendency of the Appeal.
 - (iii) The applicant shall furnish the names of his three close relatives with their addresses and phone numbers.
 - (3) In the event of breach of any of the conditions of bail, the bail granted to the applicant will be liable to be cancelled.
 - (4) Bail be furnished in the trial Court.
 - (5) The Officer In-charge of the Police Station, Wadwani is directed to submit the report of compliance of conditions of bail after every six months.
7. Criminal Application stands disposed of in above terms.

[V. L. ACHLIYA]
JUDGE