

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

14 CRIMINAL APPLICATION NO. 26 OF 2017
in
CRIMINAL APPEAL NO. 24 OF 2017.

SHARAD TRAMBAK CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. A.R. Devakate
APP for Respondents: Mr. S.G. Karlekar

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CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

ORDER RESERVED ON : 10TH FEBRUARY, 2017.
ORDER PRONOUNCED ON : 21ST FEBRUARY, 2017.

ORDER [PER K.K. SONAWANE,J.] :-

The applicant, by availing remedy under Section 389(1) of Cr.P.C. filed present application for suspension of sentence pending appeal and to release him on bail. The applicant and his mother - Sumanbai Trambak Chavan were charge-sheeted for the offence punishable under Section 498-A, 302 r/w. 34 of IPC in Sessions Case No. 54 of 2011. The Additional Sessions Judge, Dhule on appreciation of entire evidence adduced on record, acquitted accused No.2- Sumanbai (mother of applicant) and the applicant Sharad Chavan was held guilty for the offence punishable under section 498-A and 302 r/w. 34 of IPC. He was sentenced to suffer imprisonment for life and to pay fine of Rs. 5000/- (Rupees five thousand only) for the offence under Section 302 r/w. 34 and R.I. for two years and to pay fine of Rs.5000/- for the offence under Section 498-A of IPC. Being

aggrieved by the impugned finding of conviction and the resultant sentence, the applicants preferred the appeal to redress the grievances. Inter-alia, the applicant prayed for suspension of sentence, pending the present appeal.

2] After considering the grounds of appeal mentioned on behalf of the applicant/appellant this Court was pleased to admit the appeal for re-appreciation of evidence of prosecution witnesses and proceeding of appeal is kept reserved for final hearing on merit. In the meanwhile, the applicant, by resorting to the provisions of Section 389(1) of Cr.P.C. filed the present application.

3] Learned counsel for the applicant submits that the impugned judgment of conviction passed by the learned trial court is erroneous, incorrect and contrary to the provisions of law. The charges framed against the applicant is defective and unsustainable in law. The learned trial Judge failed to put the material incriminating circumstances on record to the accused in his examination under Section 313 of Cr.P.C. There is no cogent evidence available on record to prove the charges against the applicant/accused. The so called dying declarations of the victim Sonal also appear suspicious/dubious and does not inspire confidence. According to learned counsel for applicant/appellant, the applicant has every hope of success in the appeal. Therefore, he prayed for suspension of the order of sentence passed by the learned trial court against the accused/applicant.

4] We have given anxious consideration to the arguments canvassed on behalf of both the sides. Admittedly, the prosecution has examined in all 8 witnesses in this case to prove the charges against the accused. It seems that the learned trial court kept reliance on the evidence of father of the deceased as well as her dying declarations recorded by the Special Executive Magistrate and police personnel. There is no doubt that in both these dying declarations victim Sonali blamed the applicant-husband for her burns. The cause of death of victim Sonali was septicemia due to burns as opined by the Medical Experts. The superficial scrutiny of the oral and circumstantial evidence adduced on record, reflects that there was a burning incident occurred with the victim Sonali and she sustained 56% burns. During the medical treatment, she succumbed to the burns.

5] The applicant-husband put in question the genuineness of both the dying declarations of Sonali, which is the prime evidence adduced on behalf of the prosecution. No doubt that the appeal of the applicant is kept reserved for re-appraisal of evidence of the prosecution. Therefore, there is no impediment to nod in favour of the applicant for suspension of sentence imposed by the learned trial court. The applicant was on bail during the trial before the learned Additional Sessions Judge. There are no circumstances to point out that he misused his liberty. Hence, we do not find any impediment to allow the application. In the result, we pass the following order :-

[a] The application stands allowed.

[b] The execution of the impugned order of sentence of imprisonment awarded by the learned trial court against the applicant/accused is hereby suspended pending the appeal.

[c] Meanwhile, the applicant be released on bail on furnishing P.R. Bond of Rs. 20,000/-, with one solvent surety of like amount, to the satisfaction of the learned Additional Sessions Judge, Dhule. It is stipulated that the applicant shall not leave the jurisdiction of this Court without prior permission and secure his presence before this Court whenever required in the appeal.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-