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

**CRIMINAL APPLICATION NO. 158 OF 2017
IN APEAL/14/2017**

**AMOL S/O MANIKRAO GUTTE
VERSUS
THE STATE OF MAHARASHTRA**

**...
Advocate for Applicants : Deshmukh Rajendra S.
APP for Respondent: Mr.B.A.Shinde**

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CORAM : V.L.ACHLIYA,J.

DATE : 22/02/2017

PER COURT :-

The applicant has moved this application seeking suspension of sentence and to enlarge on bail during pendency of appeal on the grounds set out in detail in the application.

2] Heard the learned counsel for the applicant and APP for the State and further perused the impugned judgment, copies of depositions and the spot panchanama.

3] The applicant alongwith seven accused persons which includes father, mother, married sisters, their husbands, brother and wife of brother, were tried for committing offence punishable under

Sections 498-A, 302, 201 r.w. Section 34 of IPC with allegation that on 13/2/2014, in the mid night, the accused acting in furtherance of their common intention committed murder of deceased Bhagyashri i.e. wife of applicant accused no.1 due to the reason that she has failed to bring the money as per the demand.

4] In nutshell, it is the case of the prosecution that the deceased married with applicant accused Amol on 27/5/2013. Since after her marriage, the deceased was ill-treated and harassed by the accused persons. Deceased was asked to bring Rs.3 lakh from her parents. Failure to bring the amount, the deceased was subjected to ill-treatment and harassment. In the mid night of 13/2/2014, the deceased was strangled and accused poured kerosene on her person and set her ablaze which resulted into her death. The fact about the death of the deceased was reported by accused no.1. On the basis of report made by applicant accused no.1, death was registered as accidental death and further enquiry was conducted. On 14/2/2014, the father of the deceased lodged complaint alleging therein that the accused had illicit relations with accused no.2 i.e. wife of brother of applicant-accused no.1. He further reported that deceased was subjected to ill treatment and harassment by the accused for non-fulfillment of demand of money. On the basis of the report lodged, offence in question came to be registered. On

completion of the investigation, charge sheet was filed.

5] The accused have taken defence that the deceased was unhappy with her marriage with the accused no.1. She has expressed her dissatisfaction with many persons, about her marriage with accused. The marriage of the deceased with applicant-accused no.1 was against her wish and desire. Due to this reason, she committed suicide in the mid night by latching the door of the bed room from outside. It is further defence of the accused that after smelling that something was burning, applicant no.1 woke up from the sleep and saw that the door of the bed room was latched from outside. He broke open the portion of door with the help of axe and he came out from the room. He saw the deceased lying in burnt condition. He raised shouts. Hearing his shouts, his mother and sister-in-law who were sleeping on the floor came there. Accordingly, he reported the incident to police.

6] On conclusion of trial, trial Court has acquitted accused for offences under Sections 302, 201 read with Section 34 of IPC. However, the applicant-accused no.1, co-accused no.2 Meena and Ashabai-accused no.3 were convicted under Sections 306 and 498-A of IPC. The accused no.2 and 3 were sentenced to suffer R.I. for two years for committing offence under Section 498-A of IPC and R.I. for

three years for committing offence under Section 306 of IPC. The present applicant is sentenced to suffer R.I. for five years for committing offence under Section 306 of IPC and R.I. for two years for committing offence under Section 498-A of IPC. Being aggrieved, the applicant has preferred this Appeal.

7] Mr.R.S.Deshmukh, learned counsel for the applicant strenuously contended that the conviction of the appellant is not sustainable in law as the reasons and findings recorded by the trial Court are per-se based upon improper appreciation of the evidence. He has pointed out that accused has taken specific defence that besides the accused no.1 to 3, no one was present in the house. Accused no.6 and 7 are brother-in-law and sister of applicant residing at Gangakhed, District Parbhani. Accused no.5 was at Nagpur. Accused no.4 serving in Military and at the relevant time, posted at Kashmir. Although the persons were not present at Parli Vaijinath, they have been falsely implicated in the case which exposes tendency of complainant and other relatives to implicate the accused in false case. The accused had taken defence that the accused no.1 broke open the door of the bed room with the help of axe. This defence finds support from the spot panchanama, wherein the position to that effect has been noted. He further submits that though in the post mortem report, the cause of death has been

shown as "*death due to asphyxia due the manual strangulation*", in the cross examination the Autopsy Surgeon has admitted that no fracture of Hyoid bone was detected during post mortem. Similarly, no external injuries were noticed. It is further contended that the applicant is lying in jail since 14/2/2014 and he has spent more than three years in jail out of sentence of five years awarded by the trial Court. In the background of submissions advanced, the learned counsel submits that there is arguable case to be considered in appeal. He therefore, urged to enlarge the applicant on bail.

8] Learned APP has opposed the application with contention that there is sufficient evidence to prove the guilt against accused. He submits that incident was occurred within few months of marriage. Deceased has died due to burn injuries inside the house of accused. The accused have failed to explain the circumstances which were within their exclusive knowledge as to death of deceased. He therefore, urged to reject the application.

9] In order to appreciate the submissions advanced, I have perused the impugned judgment and order as well as the copies of depositions, the post mortem report and the spot panchanama. In my view, arguable case has been made out to be considered in appeal. The complaint in respect of the incident was lodged after

twelve hours of incident. There was no previous complaint of ill-treatment and harassment to deceased lodged by the deceased or any of her relatives. The defence of the accused that he was sleeping inside the bed room and when he woke up at 4 a.m. in the mid night, after smelling that something was burning, he found the door of his bed room latched from outside, therefore he broke the part of the door with the help of axe and opened the door, finds due support from the spot panchanama. The trial Court has acquitted the accused no.4 to 7. It has been observed that they were not present in the house. The possibility of accused being implicated in the case under the fit of anger against the applicant and other members of his family cannot be ruled out. Looking to the fact that applicant is of 26 years of age and already spent three years in jail as against sentence of five years, I am of the view that applicant deserves to be enlarged on bail. I am therefore, inclined to allow the application.

10] It is clarified that observations made as above are made for the limited purpose of deciding the bail application filed by applicant. Same shall not to be treated as observations made as to merit of the case.

ORDER

- 1) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

- (2) Pending disposal of the appeal, the applicant be enlarged 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 Police Station Parali (Rural), Tq. Parali Vaijnath, Dist. Beed, on last day of each month in between 10:00 to 11:00 AM.
 - (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) Bail be furnished in the trial Court.
- (4) In the event of breach of any of the conditions as above, the bail granted to the applicant will be liable to be cancelled.
- (5) The Officer In-charge of the Police Station, Parali (Rural) Tq. Parali Vaijnath, Dist. Beed, is directed to submit the report of compliance of conditions of bail after every six months.

(V.L.ACHLIYA,J.)