

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

**CRIMINAL APPLICATION NO. 1669 OF 2017
IN
CRIMINAL APPEAL NO. 128 OF 2017
WITH
CRIMINAL APPEAL NO. 128 OF 2017**

Tarachand Jagan Pawar (Vadar) ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

....
Mr. R.S. Shinde, Advocate h/f Mr. N.N. Desale, Advocate for applicant.
Mrs. V.N. Patil - Jadhav, A.P.P. for respondent - State.
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**CORAM : V.L. ACHLIYA, J.
DATED : 07th APRIL, 2017**

ORDER :

1. The applicant has moved this application seeking suspension of sentences and to release on bail during pendency of the appeal.
2. Heard learned Counsel for the applicant and learned A.P.P. for respondent - State.
3. The applicant was tried for committing offence punishable under Section 302 of the Indian Penal Code, section 7 (1)(d) of the

Protection of Civil Rights Act and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On conclusion of the trial, learned Sessions Judge convicted the applicant under Section 304, Part II of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for three years and fine of Rs.2,000/-. Being aggrieved, applicant has preferred appeal. During pendency of appeal prayed for suspension of substantive sentence and release on bail.

4. Mr. Shinde, learned Counsel for applicant assailed the reasons and findings recorded by the Trial Court with contentions that on the face of evidence on record, no offence under Section 304, Part II of the Indian Penal Code is made out. He points out that as per the postmortem report, no external injury was noticed over the head of the deceased. He further points out that the autopsy surgeon has deposed in his cross examination that deceased was suffering from tuberculosis of lungs and his liver was damaged. He has admitted that damage to liver may be due to consumption of liquor. He further invited attention to the admission given in the cross examination by P.W. 5 that injuries mentioned in column nos. 17 and 19 of the postmortem report are possible due to fall on ground. By referring overall facts, learned Counsel submits that there is no case to infer that homicidal death of deceased not amounting to

murder has been caused by the accused. He further submits that in all probabilities the deceased appears to have died due to serious ailment of tuberculosis and damage of liver cannot be ruled out.

5. On the other hand learned A.P.P. opposed the application. She submits that the reasons and findings recorded by the Trial Court are in consonance with the evidence on record. She further submits that as per the postmortem report, internal damage was noticed to the head. The diffuse and patchy subarachnoid hemorrhage over left parietal region and left occipital region was noticed during autopsy. She further submits that as per final cause of death given by autopsy surgeon, the death was caused due to the head injury with pulmonary tuberculosis and fatty degeneration of liver.

6. Having regard to overall facts of the case, the evidence on record and judgment and order of the Trial Court, I am of the view that the arguable case is made to be considered in appeal. It is apparent from the face of record that deceased was suffering from pulmonary tuberculosis as well as serious ailment of liver. No external injury was noticed over the head of the deceased. There was no strong motive to cause murder of the deceased. During trial the applicant was on bail. The

applicant was convicted and sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs.2,000/-. It will not be possible to immediately take up appeal for final disposal. In case the sentence is not suspended and applicant is not enlarged on bail during the pendency of appeal, there is every likelihood that the purpose of filing the appeal may be defeated. Having regard to the over all facts of the case, the applicant deserves to be enlarged on bail. Hence, the following order.

ORDER

- (1) Pending disposal of the appeal, the substantive sentence stands suspended subject to deposit of fine.
- (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 Nilanga Police Station, Dist. Latur, on last day of each month in between 10:00 A.M. to 11:00 A.M.
 - (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 & addresses of his three close relatives with phone

numbers & documentary proof.

- (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 to be furnished in the trial Court.

(V.L. ACHLIYA, J.)

SSD