IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1807 OF 2017
IN
CRIMINAL APPEAL NO. 138 OF 2017

Kalu s/o Ranu Mandavkar,
Age : 74 years, Occu.: Begging/Agri.
Original R/o : Village Dalbi,
Post : Kolambi, Tal. & Dist. Akola.
At present residing at village
Paldhi (Khurd), Near Sai Baba Temple,
Dharangaon, Taluka : Dharangaon,
District : Jalgaon.

APPLICANT

-VERSUS-

The State of Maharashtra,
Through the Police Station,
Dharangaon, Taluka : Dharangaon,
District. Jalgaon.

RESPONDENT

...

Mr. Govind A. Kulkarni, Adv. h/f
Mr. R.S. Deshmukh, Adv. for Applicant.
Mr. K.D. Munde,APP for Respondent no.1/State.

...

CORAM : S.S. SHINDE &
S.M. GAVHANE JJ.

Reserved on :- 14.07.2017
Pronounced on :- 20.07.2017

...

ORDER : (Per S.S. Shinde, J.) :

1. This application is filed seeking

direction to the respondent to release the appellant/applicant on bail by suspending the substantive sentence so awarded to him by the Learned Additional Sessions Judge, Jalgaon in Sessions Case No. 114 of 2015 vide impugned Judgment and order (Exhibit – 115) dated 07.02.2017, whereby the Applicant/accused is convicted under Section 235 (2) of the Code of Criminal Procedure, 1973 for committing offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- (Rs. Five thousand Rupees only), in default to undergo rigorous imprisonment for 6 (six) months.

2. Learned counsel appearing for the applicant submits that, the case rests upon the circumstantial evidence and there is no chain of circumstances so established by the prosecution so as to sustain the conviction

of the appellant. The trial Court did not consider properly the defence taken by the appellant. The prosecution witness PW-5 (Anita Alias Barki), did not support the prosecution case and, therefore, her evidence should have been discarded by the trial Court. There is no independent witness to the incident and spot of the incident was in crowded area. It is submitted that, the prosecution has not brought on record evidence showing that the appellant had motive to commit the alleged offence. The cause of death is not convincingly proved by the prosecution. The prosecution case is surrounded by suspicious circumstances, and therefore, the appellant deserves to be released on bail.

3. On the other hand, the learned APP appearing for the State submits that, the prosecution has proved beyond reasonable

doubt guilt of the appellant. There is sufficient, cogent and convincing evidence brought on record by the prosecution. He invites our attention to the findings recorded by the trial Court and submits that the said findings are in consonance with the evidence brought on record.

4. We have heard the counsel appearing for the appellant and learned APP appearing for the State. We have also perused the notes of evidence which are tendered across the Bar by the counsel appearing for the appellant. We have perused the evidence of Mohan Ganesh Mandolkar (PW-1) and also the evidence of PW-3, PW-4 and PW-6 and also other prosecution witnesses. It appears that, the death was homicidal in nature. The evidence of prosecution witnesses clearly proves the circumstances brought on record by the prosecution. PW-5 - Anita stated in her

evidence that quarrel took place between victim and accused and at the relevant time she was playing nearby the place of the incident and also she further narrated the details about the incident. The said incident was informed by the PW-5 – Anita to other prosecution witnesses namely Saundaribai (PW-7) and Mohan (PW-1).

5. Prima facie, it appears that, the findings recorded by the trial Court are sustainable. We do not wish to elaborate our reasoning on merits since the appeal filed by the appellant is pending. During the course of hearing the counsel appearing for the appellant fairly stated that, the appellant was not on bail during trial. In that view of the matter application stands rejected.

(S.M. GAVHANE, J.) **(S.S. SHINDE, J.)**

ATU/-