

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

**CRIMINAL APPLICATION NO.3038 OF 2017
IN
CRIMINAL APPEAL NO.268 OF 2017**

Morsing @ Pintu Sonu Pawar,
Age 23 years, Occu. Labour,
R/o.Shevge Tanda, Tq.Parola,
Dist. Jalgaon.

APPLICANT

VERSUS

The State of Maharashtra

RESPONDENT

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Mr.Satej S.Jadhav, Advocate for the applicant
Mr.M.M.Nerlikar, APP for the respondent/State
Mr.S.J.Salune, Advocate, to assist the P.P.

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL, JJ.**

Reserved on : 09.11.2017
Pronounced on : 15.11.2017

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

1] This Application is filed praying
therein for suspension of the sentence and
enlarging the applicant on bail during the
pendency of the Criminal Appeal.

2] The learned counsel appearing for

the applicant/appellant submits that the prosecution utterly failed to establish the chain of circumstance, and therefore, the benefit of doubt deserves to be given to the applicant/appellant. It is submitted that PW-4, Ukha Pawar, has deposed about last seeing the deceased in the company of the appellant/applicant, while he himself was performing *pooja* at village temple. He has seen the appellant/applicant along with the deceased going together to attend the nature's call near the field of Padamtima. That his statement was belatedly recorded after 7 days i.e. on 10.10.2014. In cross his answers to the queries shows that he is a got up witness and more over he has admitted that he has not disclosed the relevant fact to anyone till the time, his statement was recorded. It is submitted that PW-6, Yogesh, is a chance witness to the discovery. That PW-7 is the Medical Officer, who has

conducted the autopsy and has proved the same.

3] The learned counsel appearing for the applicant invites our attention to the averments in the application and submits that the application deserves to be allowed.

4] On the other hand, the learned APP appearing for the respondent-State relying upon the findings recorded by the trial Court, and notes of evidence submits that the prosecution has proved the case beyond reasonable doubt.

5] We have considered the submission of the learned counsel appearing for the applicant and the learned APP appearing for the respondent-State. At the outset, it would be necessary to reproduce herein below the circumstances on which reliance was placed by the trial Court, which are as under:

- 1] *That Master Arun was kidnapped;*
- 2] *Motive;*
- 3] *'Last seen' in the company of accused no.2;*
- 4] *Murder of deceased at the Nala and disposal of the dead body;*
- 5] *The discovery of location, on the basis of disclosure made by accused no.1, where the dead body was buried;*
- 6] *The recovery of dead body and its identification;*
- 7] *Criminal conspiracy to commit the crime.*

6] The prosecution examined PW-7 Dr.Pathak and proved that the death of Master Arun was homicidal in nature. Upon careful reading of the evidence brought on record by the prosecution, it is crystal clear that the age of deceased Arun was 14 years when he was kidnapped. The ingredients of Section 363 of the IPC i.e. taking away or enticing any minor; the minor being below 16 years in case of a male and 18 years in case of female; out

of keeping of the lawful guardian and without his or her (guardian's) consent, have been attracted and upon appreciation of the evidence, the accused have convicted under Section 363 of the Indian Penal Code.

7] In the present case, the deceased Arun (minor) was kidnapped by the applicant and another co-accused. The evidence of PW-4 Ukha Pawar mentions that when he had gone to the temple for performing *puja* and that at about 6.30 p.m. he had noticed that accused no.2 Morsing and deceased Arun were proceeding towards the field of Padam Tima for answering nature's call. He further stated that thereafter he had returned to his house and that thereafter on the next day he came to know that Arun was kidnapped. It appears that the deceased was lastly seen by the PW-4 with accused no.1 on 3rd October, 2014 and thereafter on 5th October, 2014 the

dead body was found. It suggests proximity of time and place.

The spot on which the dead body of Arun was buried was revealed by none other than accused no.1. It appears that the dead body of Arun was buried in the field of Padam Tima and was taken out on the disclosure statement made by accused no.1 namely Motiram Pawar. Upon considering the evidence in its entirety, it appears that, both the accused hatched criminal conspiracy and pursuant to it, they kidnapped Arun and killed him. They are convicted for the offence punishable under Sections 302 and also 120-B of the Indian Penal Code. It clearly emerges that the deceased Arun was taken to the Nala by accused no.2 and thereafter he was murdered by throttling, by accused nos.1 and 2 by sharing common intention.

8] It is not necessary for us to

elaborate the reasons, suffice it to say that, *prima facie* the findings recorded by the trial Court appears to be in consonance with the evidence brought on record by the prosecution. Therefore, we are not inclined to entertain the application for enlarging the applicant on bail. Hence, the application stands rejected.

9] The observations made herein above are *prima facie* in nature and confined to the just decision of the present application.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC