

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1034 OF 2017
IN
CRIMINAL APPEAL NO. 595 OF 2017**

Mohan Gangaram Kesade .. Applicant

v/s.

The State of Maharashtra ..Respondent

Mr. Jayant J. Bardeskar for the Applicant.
Mr. Rajan Salvi APP for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 22nd AUGUST, 2017.**

P.C.

1. The applicant who was an accused in Sessions Case No. 155 of 2016 has filed this application seeking suspension of sentence imposed vide judgment dated 29th April, 2017, by the Assistant Sessions Judge, Kolhapur, and for release on bail during pendency of the appeal.

2. The applicant herein was married to one Sushila. After 17 years of the marriage, said Sushila set herself ablaze on 16th April,

2015. She succumbed to the injuries on 21st April, 2015 at about 8.30 p.m. The mother of the deceased had lodged an FIR against the applicant alleging that the applicant had subjected Sushila to cruelty and that he had abetted the suicide. Pursuant to the said FIR, crime no. 115 of 2015 was registered.

3. After completion of investigation, chargesheet was filed against the applicant for offences under Section 498A and 306 of the Indian Penal Code. After considering the evidence on record, the learned Judge held the applicant guilty for the offence under Section 498A and sentenced him to undergo rigorous imprisonment for a period of two years and fine of Rs.1000/- in default to undergo Rigorous Imprisonment for three months. The applicant is also held guilty for the offence under Section 306 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs.1000/- in default to undergo Rigorous Imprisonment for three months.

4. The applicant has challenged the said conviction and sentence

and during pendency of the appeal has prayed to be released on bail after suspending execution of substantive sentence.

5. Heard the learned Counsel for the applicant and the learned APP for the State. Perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

6. The evidence on record prima facie indicates that the applicant and the deceased were married about 17 years prior to the date of the incident and it is stated to be a love marriage. Two children were born out of the said wedlock. Hence, prima facie, demand for dowry after 17 years of marriage appears to be improbable.

7. The evidence on record indicates that the applicant used to consume alcohol and used to abuse the applicant suspecting her fidelity. On the relevant date there was a fight between the applicant and said Sushila, and the applicant allegedly told his wife that he did not need her and that she could commit suicide. The evidence on

record prima facie reveals that the deceased had poured kerosene over herself and set herself ablaze. The material on record prima facie indicates that the applicant had tried to extinguish the fire.

8. In order to attract provisions of Section 306 of Indian Penal Code there has to be evidence of abetment within the meaning of Section 107 of Indian Penal Code. In the present case, there is no prima facie material to show that the applicant had either instigated and or aided the deceased in committing suicide.

9. The applicant is in custody since 4th September, 2016. Considering this fact and considering the nature of the evidence in support of the charge levelled against the applicant, in my considered view, this is a fit case for releasing the applicant on bail pending final disposal of the appeal on merits. Hence, the order:-

- i) The application is allowed.
- ii) The execution of sentence imposed vide judgment dated 29th April, 2017, in Sessions Case No. 155 of 2016 is suspended till final

hearing and disposal of the appeal.

iii) The applicant is ordered to be released on bail on furnishing fresh bail bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned Assistant Sessions Judge, Kolhapur .

10. The applicant shall furnish his contact number, and his local as well as permanent address, if any, to the Investigating Officer as well as in the fresh bail bonds.

(ANUJA PRABHUDESSAI, J.)