

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

**CRIMINAL APPLICATION NO.1120 OF 2017
IN
CRIMINAL APPEAL NO.629 OF 2017**

Chaitesh @ Omej Manoj Khopkar ...Applicant
Versus
The State of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION NO.1121 OF 2017
IN
CRIMINAL APPEAL NO.629 OF 2017**

1. Nanda Manoj Khopkar
2. Tarabai Moti Chavan ...Applicants
Versus
The State of Maharashtra ...Respondent

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Mr. Ganesh K. Gole for the Applicants.
Mr. Prashant Jadhav, APP for the Respondent -State.

CORAM :SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th AUGUST, 2017.

P.C.:-

By this application, the Applicants, who are accused Nos.1, 2 and 3, in Sessions Case No.250 of 2014, have prayed for suspension of execution of substantive sentence and enlargement of bail pending hearing and final disposal of the appeal.

2. The Applicants hereinafter referred to as accused Nos.1, 2 and 3.

3. Heard Mr. Ganesh Gole, the learned counsel for the Applicants and Mr. Prashant Jadhav, the learned APP for the Respondent -State. Perused the records. The Applicants have been convicted for offence punishable under section 306 read with 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.5000/-each i/d. to suffer further rigorous imprisonment for six months.

4. The learned counsel for the Applicants submits that the Applicants are in custody since 15.7.2017. He has placed on record copy of the order dated 3rd August, 2017 whereby this Court (Coram : Revati Mohite Dere, J.) has granted bail to one of the co-accused and suspended the execution of substantive sentence imposed on her on the ground that her name does not figure in the suicide note (Exhibit-14). The learned counsel for the Applicant has drawn my attention to the suicide note and has contended that the name of the Applicant Chaitesh @ Omei is also not reflected in the suicide note. He further contended that A.M. Nanda and Tarabai are women and that the Applicant Tarabai is of advanced age. The learned counsel for the Applicants submits that considering the above facts and particularly the nature of evidence against these Applicants, they be released on bail.

Mr. Gole, the learned counsel for the accused Nos.1 to 3 undertakes to deposit fine amount within a period of 8 days from the date of release of the accused Nos.1 to 3 from jail.

5. As stated earlier, the accused are sentenced to undergo imprisonment of maximum five years. The appeal is of the year 2017. Considering the large pendency of the cases, the Appeal is not likely to come up for final hearing in the next couple of years. Hence, rejection of prayer to suspend the execution of substantive sentences will result the accused Nos.1 to 3 undergoing the imprisonment even before their Appeal is decided on merits.

6. The Applicants were on bail pending trial. They have not violated the conditions of bail. Furthermore, the name of the Applicant Chaitesh @ Omei is not reflected in the suicide note at Exhibit 14. The other two Applicants are women and the Applicant Tarabai in particular, is over 80 years of age. Considering the above facts as well as the nature of evidence, in my considered view case is made out to suspend execution of substantive sentence and release of the Applicants on bail pending the hearing and final disposal of the Appeal. Hence, the following order is passed :-

ORDER

- (i) The Applications are allowed.
- (ii) The execution of substantive sentence of accused Nos.1 to 3 in Sessions Case No.250 of 2014 is suspended till hearing and final disposal of the Appeal. The Applicants are ordered to be released on bail on furnishing bail bonds of Rs.15,000/- (Rupees Fifteen Thousand) each with one or two sureties to the like amount to the satisfaction of the learned Additional Sessions Judge, Pune.
- (iii) The Applicants shall furnish their permanent as well as local address, if any, and shall intimate change of address, if any, to the Investigating Officer, as well as to the concerned Court.

(ANUJA PRABHUDESSAI, J.)