

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

**CRIMINAL APPLICATION NO.1423 OF 2017
IN
CRIMINAL APPEAL NO.836 OF 2017**

Santosh Pandurang Gaikwad ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Satyavrat Joshi for the Applicant.

Mr. Vinod Chate, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th OCTOBER, 2017.

P.C.:-

The Applicant herein is convicted for offence punishable under Sections 306 and 506 of the IPC and he has been sentenced to undergo imprisonment for a period of five years with fine of Rs.3,000/- i/d. rigorous imprisonment for three months in respect of offence punishable under Section 306 of the IPC and to suffer rigorous imprisonment for the period of one month and to pay fine of Rs.1,000/- i/d. to suffer rigorous imprisonment for a period of one month for the offence punishable under Section 506 of the IPC.

2. By this application, the Applicant has sought suspension of execution of sentence pending the appeal.

3. Heard Mr. Satyavrat Joshi, the learned counsel for the Applicant and Mr. Vinod Chate, the learned APP for the Respondent -State.

4. The learned counsel for the Applicant states that the evidence of PW1 does not prima facie indicate that the Applicant herein had abetted commission of suicide. He has further submitted that the CA report also does not support the case of the prosecution that the death of deceased Kavita was due to poison. He has stated that the testimony of PW2 also prima facie belie the statement made by PW1 that on the relevant date the Applicant and his family members had quarreled with the deceased.

5. The learned APP has submitted that the evidence of PW6 clearly indicates that death was suicidal. He has submitted that the evidence of PW1 and PW2 clearly proves the role of the Applicant in commission of the said offence.

6. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State.

7. The records prima facie indicate that Kavita, wife of PW1 had expired on 10.12.2012. PW6 Dr. Satyanarayan Punpale has deposed that stomach contained yelloish thin red material with peculiar smell. Viscera was preserved and sent to CFSL. The CFSL report at Exhibit-23 prima facie reveals that general and specific chemical testing did not report any poison in Viscera i.e. stomach and small intestine, liver spleen, kidney as well as in blood. Though it is the case of the prosecution that a bottle of poison was recovered from the house of the deceased there is no prima facie material to indicate that said bottle was sent to CFSL for examination. Furthermore, the evidence of PW2, son of the deceased prima facie indicates that on the relevant date the Applicant and his family members had come to their house and had abused her mother-deceased Kavita and later on the same day the deceased had gone to the house of accused and had questioned him as to why they had abused her. He claims that her mother had returned home and consumed poison. It is to be noted that the family members of the Applicant, who had allegedly abused Kavita of having illicit relations with the Applicant herein have been acquitted. Prima facie there is no evidence on record to prove that the Applicant has committed any such act or omission as to abet suicide. Considering the nature of charge as well as the evidence in support thereof, in my

considered view this is a fit case for suspension of execution of sentence pending the appeal. Hence, the order:-

- (i) The application is allowed;
- (ii) Execution of sentence imposed vide judgment dated 22nd September, 2017 in Sessions Case No.727 of 2015 is suspended pending hearing and final disposal of the Appeal subject to the Applicant furnishing bail bonds of Rs.20,000/- (Rupees Twenty Thousand only) with one or two sureties to the like amount to the satisfaction of the Additional Sessions Judge, Pune;
- (iii) The Applicant shall furnish his contact number and 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.

8. The Criminal Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)