

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.411 OF 2017
IN
CRIMINAL APPEAL NO.249 OF 2017

Gajanan s/o Shankarrao Tapase

..VS..

State of Maharashtra, through PSO Police Station Chandrapur (City)

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A.C. Jaltare, Counsel for the applicant.

Shri N.B. Jawade, Addl.P.P. for the non-applicant/State.

CORAM : V.M. DESHPANDE, J.

DATED : JULY 18, 2017.

This is an application under Section 389 of the Code of Criminal Procedure for suspension of substantive jail sentence and for grant of bail.

The applicant, who is the husband of deceased Ashwini, has moved this application. He is convicted by learned Additional Sessions Judge, Chandrapur on 23.5.2017 in Sessions Case No.49 of 2015 for the offence punishable under Section 498A of the Indian Penal Code and was directed to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- and in default of payment of fine amount to suffer simple imprisonment for 1 month. He is also convicted for the offence punishable under Section 304B of the Indian Penal Code and

was directed to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- and in default of payment of fine amount to suffer simple imprisonment for 3 months. He is also convicted for the offence punishable under Section 3 read with Section 4 of the Dowry Prohibition Act, 1961 and on that count was directed to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.2,000/- and in default of payment of fine amount to suffer simple imprisonment for 15 days.

This Court on 6.6.2017 admitted the present appeal and record and proceedings were called for consideration of application for bail.

I have heard learned counsel Shri A.C. Jaltare for the applicant and learned Additional Public Prosecutor Shri N.B. Jawade for the non-applicant/State.

Deceased Ashwini died on 9.2.2015. Postmortem report is at Exhibit 85. According to postmortem report Exhibit 85, the cause of death is due to poisoning.

The first information report is lodged by Chandabai Tupkar, mother of the deceased. The said report is lodged on 11.2.2015. The main contention of learned counsel Shri A.C. Jaltare for the applicant is that there is a delay of 2 days in lodging the first information report.

Merely because there is a delay in lodging the first information report, that by itself is not sufficient to discard the

entire prosecution case. However, on perusal of record shows that prior to registration of the crime, initially proceedings under Section 174 of the Code of Criminal Procedure were registered vide AD No.8 of 2015. Spot panchanama is at Exhibit 40. The record shows that said panchanama was recorded during the inquiry of the said accidental death proceeding.

Perusal of Exhibit 48 shows that it was drawn on 10.2.2015 and the place of occurrence was shown by PW1 Chandabai Tupkar who is first informant. Thus, on 10.2.2015 there was an ample opportunity for first informant to disclose the factum of oral dying declaration on which heavy reliance is placed by the prosecution as according to the prosecution, due to ill-treatment on Ashwini she has consumed poison. However, said was not disclosed. Further, Exhibit 75 is an admission card of Ashiwini at Mankar Hospital where she was examined by PW4 Dr. Bendale. His evidence as well as Exhibit 75 show that upon inquiry from Ashiwini, she has disclosed that she has consumed poison. However, Exhibit 75 and the evidence of Dr. Bendale are silent that she disclosed that due to ill-treatment at the hands of the present applicant, she has consumed poison.

I have gone through other relevant evidence. Prior to lodging of Exhibit 68, at no point of time any complaint was lodged against the present applicant or his mother who is already acquitted by learned Sessions Judge.

In view of aforesaid observations, as noted on the basis of available record, I am of the view that applicant has made out a *prima facie* case for suspension of substantive jail sentence and for grant of bail. Further, applicant was on bail during the course of Trial and at no point of time he has misused the liberty granted to him that is one of additional circumstances as to why this Court should exercise its discretion in favour of the present applicant. Hence, the following order:

ORDER

- 1) The criminal application is allowed.
- 2) Substantive jail sentences, imposed upon the applicant, in Sessions Case No.49 of 2015 dated 23.5.2017 by learned Additional Sessions Judge, Chandrapur, shall remain suspended during the pendency of the present appeal.
- 3) The applicant be released on bail on he executing a P.R. Bond in the sum of Rs.5,000/- (rupees five thousand only) with one solvent surety.
- 4) The Court below, before whom the bail bond is to be executed, shall ensure that all fine amounts are deposited, before the applicant is released on bail.

5) The applicant shall remain personally present before this Court at the time of final hearing.

6) The criminal application is allowed and disposed of.

JUDGE

!! BRW !!

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