

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

**CRIMINAL APPLICATION NO.128 OF 2018
IN
CRIMINAL APPEAL NO.822 OF 2016**

Dagadu Dhondiba Jankar

..Applicant

Versus

The State of Maharashtra

..Respondent

**Dr. Yug M. Choudhary a/w Ms. Payoshi Roy, Advocate for the
Applicant.**

Ms. M. H. Mhatre, APP for the Respondent - State.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 12th JUNE, 2018**

PC.

1] This is an application for suspension of sentence and grant of bail during pendency of the Appeal.

2] The Applicant who is the original Accused No.2 has been convicted for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short) alongwith three other accused.

3] Heard Dr. Yug Choudhary, learned counsel for the Applicant and Ms. M. H. Mhatre, learned APP for the Respondent - State.

4] Ms. M. H. Mhatre, learned APP submits that the learned Trial

Judge upon appreciation of the evidence has convicted the Applicant. She submits that though the Applicant was on bail during the trial, now in view of the conviction, the parameters would change and she further submits that in view of one written dying declaration and two oral dying declarations, the Applicant is not entitled to suspension of sentence.

5] We have perused the material on record. The prosecution relies on two oral dying declarations, one given to PW-1 – Kalu Shelke, the father of the deceased and second given to PW-2 – Dipak Shelke, who had accompanied the deceased to the hospital. The written dying declaration is recorded by the PW-11 – Investigating Officer.

6] In so far as the written dying declaration is concerned, no doubt that the said implicates the present Applicant, however, at the end of the written dying declaration, there is no endorsement by the Medical Officer, to the effect that the patient was physically and mentally fit to make the dying declaration. Apart from that, PW-7 – Dr. Suraj Gandhi, in his cross-examination admitted that in the entire papers, nowhere it has been mentioned that he has given endorsement on the dying declaration of patient.

7] He has further admitted that on the papers there is no

endorsement that at the time of recording of the statement, he was present there. In that view of the matter, the conviction cannot be solely rested on the basis of said dying declaration.

8] In so far as dying declaration given to PW-2 – Dipak Shelke is concerned, though he claims that the dying declaration was given to him when the deceased was taken by him to the hospital and though he admits that he was present in hospital immediately after the incident, the statement which contains the oral dying declaration has been recorded by the police for the first time only on 24th January 2012.

9] In so far as the dying declaration given to PW-1 – Kalu Shelke i.e. father of the deceased is concerned, is the same as given to PW-2 – Dipak Shelke.

10] Apart from that it is to be noted that the PW-11 – Investigating Officer as well as PW-7 – Dr. Suraj Gandhi, have clearly admitted the history while admitting the deceased in the hospital was assault by unknown persons. It is further to be noted that though the Applicant was on bail during the pendency of trial, there are no allegations that he has misused liberty. It is further to be noted that PW-2 was one of the persons who accompanied the deceased in the hospital.

11] In that view of the matter, we find that the Applicant have good case on merits. The application is therefore allowed. The order of sentence is suspended. The Applicant is directed to be released on bail on the same conditions as were applicable during the trial.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]