

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.871 OF 2018

IN

CRIMINAL APPEAL NO.710 OF 2018

Samir @ Mohsin @ Kanhya Javed Kotwal ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Hrishikesh Mundargi i/b. Mr.Jayant J. Bardeskar, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 18th JULY 2018.

P.C. :

1 This is an application for suspension of sentence imposed on the applicant/accused and releasing him on bail during pendency of the appeal filed by him.

2 The applicant/accused is convicted of the offence punishable under Section 306 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for five years apart from payment of fine of Rs.3,000/- and in default to undergo

sentence of three months of simple imprisonment.

3 Heard both sides.

4 The learned Additional Public Prosecutor opposed the application by contending that the applicant was very much present on the spot when Pragati committed suicide by consuming poison. She placed reliance on evidence of PW.No.3 Kishor More. The learned Additional Public Prosecutor further relied on text messages of Pragati to the applicant reflected from the Judgment to demonstrate that the applicant has abated commission of suicide by Pragati.

5 I have considered the rival submissions.

6 Pragati, as seen from the record, was having love affair with the applicant as well as P.W.No.6 Atul Chavan. Her marriage with P.W.No.6 Atul Chavan was in the process of settlement. On this backdrop, Pragati was trying to get rid of applicant. This fact is reflected from the text messages sent by her to P.W.No.6 Atul Chavan. Text messages to deceased Pragati by the applicant shows that the applicant was convincing her to be in his company and to marry him. In this backdrop, the question at the time of consideration of appeal finally will be whether such conduct amounts to instigating a woman to commit suicide by having

necessary *mens rea*. Suffice to state that during pendency of the trial, the applicant/accused was on bail. He has not misused his liberty. Short sentence of imprisonment is imposed on him. The appeal filed by him may not be heard within short period. Therefore, the Order :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The application is disposed of accordingly.

(A.M.BADAR J.)