

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.558 OF 2018

IN

CRIMINAL APPEAL NO.227 OF 2018

Vinaykumar Vyankatnarayan Chaudhari ... **Applicant**

V/s.

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

Mr.Bhaves Thakur a/w. Mr.Atul Daga, Mr.Suraj Iyer i/b. Ganesh & Co. for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 8th JUNE 2018.

P.C. :

1. This is an application for suspension of sentence and releasing applicant/accused no.2 Vinaykumar on bail during the pendency of appeal filed by him. He has been convicted of offence under Sections 498A and 306 read with 34 of the Indian Penal Code. He is sentenced to suffer rigorous imprisonment of 10 years for the offence punishable under Section 306 and that of three years for the offence punishable under Section 498A of the Indian Penal Code apart from imposing of some fine.

2. Heard the learned Advocate appearing for the applicant/accused no.2 as well as the learned Additional Public Prosecutor for the State.

3. The learned APP drew my attention to the evidence of PW3 Dr.Sachin Indulkar to demonstrate that present applicant was very much present at the scene of occurrence at the time of incident. According to the learned APP, the evidence of PW4 Veena-mother of deceased Varsha shows that applicant had subjected the deceased to the cruelty and abetted commission of her suicide.

4. I have considered the rival submissions also perused the copies of depositions as well as that of the impugned judgment and order.

5. Deceased Varsha is second daughter of PW4 Veena. Varsha married accused no.1 Vinod on 2nd April, 2003. The couple resided thereafter in a flat at Dombivali. The present applicant is brother of accused no.1 Vinod. Varsha hang herself at the house of her husband accused no.1 Vinod on 25th July, 2003 and she died on 26th July, 2003.

6. So far as the present applicant is concerned, the evidence against him is of the nature that as he raised demand of flat and asked the same in the name of his brother-Vinod. He has also asked for providing money for incurring household expenses.

7. The applicant/accused no.2 Vnaykumar is residence of Ramtek Town in Nagpur District. PW3 Dr.Sachin Indulkar deposed that the presence of the applicant/accused at the scene of occurrence. For making offence under Section 498A as well as 306 of the Indian Penal Code, there needs to be positive evidence of subjecting the married woman to cruelty as explained in Explanation-II of Section 498A apart from positive evidence of provocation or incitement to a married woman to indulge in self effacement.

8. Considering the nature of evidence against the present applicant as well as fact that he was on bail during the pendency of trial, the following order;

:: ORDER ::

- (i) The application is allowed.
- (ii) 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 in the sum of Rs.15,000/- and on furnishing surety in the like amount.

(iii) The application is disposed of accordingly.

(A.M.BADAR J.)