

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1092 OF 2018

IN

CRIMINAL APPEAL NO.876 OF 2018

Nanaji Sukhdeo Aher.] ... Applicant /
Original Accused

Versus

The State of Maharashtra.] ... Respondent

Mrs. A. M. Z. Ansari a/w Mrs. Nasreen Ayubi for Applicant.
Mrs. M. H. Mhatre, APP for State.

**CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE :- 30 JULY, 2018

P. C. :-

1. This is an application for suspension of sentence and grant of bail during pendency of the present Appeal.
2. The application is vehemently opposed by the learned APP.

3. We find that the order of conviction is basically based on the evidence of PW 6 Nayab Tahsildar Smt. Shubhada Kulkarni who has recorded the dying declaration. From her evidence, it is seen that she does not know as to whether after recording statement, it was to be forwarded to the nearest Magistrate. She has further deposed that she also does not know whether recorded statement is to be kept in a sealed condition. She has also deposed that she did not know to whom she had handed over the copy of the recorded statement.

4. *Prima-facie*, we find that on the basis of such evidence, the conviction may not be sustainable. Apart from that, the doctor who has examined the deceased prior to making the statement and after making the statement, has not been examined by the prosecution.

5. The another factor that weighed with us is that the Applicant was granted bail during the pendency of the trial and he has not misused the liberty.

6. In that view of the matter, the Application deserves to be allowed. Hence, the following order :

ORDER

The Applicant is directed to be released on bail on the same terms and conditions as were applicable during trial, however on fresh bond.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)