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

CRIMINAL APPLICATION NO.1093 OF 2018
IN
CRIMINAL APPEAL NO.877 OF 2018

Pramila Roopchand Wagh and others	..Applicants
Versus	
The State of Maharashtra	..Respondent

Mr. Bhagat S. Gopal, Advocate for the Applicants.

Mrs. M. M. Deshmukh, APP for the Respondent - State.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 7th AUGUST, 2018

P.C.:-

1] This is an application for suspension of sentence and for grant of bail during pendency of appeal. The application is vehemently opposed by Mrs. Deshmukh, the learned APP appearing on behalf of the State.

2] The prosecution case is that, the deceased Mohammad Ismail Menon was having relationship with accused No.1 - Pramila Wagh. It is the prosecution case that, accused No.1 – Pramila was having son and daughter from her first marriage. Her son Raja was married to accused No.2 – Jyoti, whereas her daughter Asha was also married to

one Punjabi. It is the prosecution case that, the deceased did not like the son, daughter-in-law and daughter of accused No.1 coming to the house, which was given by deceased to accused No.1 for residing. It is the prosecution case that, on that count, when deceased had visited the house wherein the accused No.1 was residing, there was quarrel between the accused and the deceased. As a result of quarrel, the deceased was set on fire due to which his death occurred.

3] The prosecution relied on the evidence of P.W. 4 – Ramu who is said to be neighbour of accused No.1. He is said to be the eye witness. The other evidence against the present applicants, is circumstantial evidence. No doubt that, conviction can be rested on the solitary testimony of the eye witness. However, evidence of such a witness has to be scrutinized with greater caution and circumspection and only if his evidence is found to be cogent, trustworthy and reliable, the order of conviction could be maintained. In view of the law laid down by their Lordships of the Hon'ble Apex Court in the case of *Niranjan Singh vs. Prabhakar Rajaram Kharote*¹, detail elaboration of evidence at the stage of considering the application for bail will have to be avoided.

4] At least prima faice, we find that evidence of P.W. 4 – Ramu cannot be said to be wholly reliable. His statement is recorded after four days, though he claims to be the neighbour of accused No.1. The suggestion is given to him that he is a resident of Jyotiba Phule Nagar,

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whereas incident has occurred in Kaushal Nagar. Perusal of address given in his statement under Section 161 of Cr.P.C. would also reveal that address is that of Mahatma Phule Nagar. The another factor that needs to be taken into consideration is that, all the three accused are women. One of them is carrying pregnancy as a surrogate mother. It is further to be noted that, the applicants were on bail during trial and it is not the case of the prosecution that they have misused their liberty.

5] Taking into consideration these aspects of the matter, we are inclined to allow the application.

6] The application is therefore allowed. The substantive sentences and conviction imposed on the Applicants by the Addl. Sessions Judge Kalyan in Sessions Case No.90 of 2012 are stayed. Applicants are directed to be released on bail on the same terms and conditions as were applicable during trial.

7] Application is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)