

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

**CRIMINAL APPLICATION NO. 1131 OF 2018
IN
CRIMINAL APPEAL NO. 888 OF 2018**

Uttareshwar Lahu Tonge ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Jayant Bardeskar for the Applicant.
Mr. V.B. Konde-Deshmukh, A.P.P. for Respondent- State.

**CORAM : INDRAJIT MAHANTY AND
V.K. JADHAV, JJ.**

DATE : 18th DECEMBER, 2018.

P.C. :

1 Pending hearing and final disposal of the Criminal Appeal No.888 of 2018 preferred against the judgment and order of conviction passed by the learned Additional Sessions Judge, Khed, Rajgurunagar, District Pune, dated 18.05.2018 in Sessions Case No.47 of 2016, the Applicant-Accused has preferred this Application for getting release on bail and also for suspension of substantive part of the sentence passed against him.

2 Learned Counsel for the Applicant-Accused submits that the prosecution case entirely based upon circumstantial evidence and there is no direct evidence in this case. PW1 Blaji, who happened to be real brother of the deceased has admitted in his cross-examination that after the death of Vaishali, for the first time he stated to the Police that accused used to consume liquor and used to take doubt on fidelity of the Vaishali and beat her. Learned Counsel for the Applicant-Accused submits that though there is evidence of death by hanging, PW3 Dr. Kedare has expressed the opinion about the death by strangulation without any supportive findings. Prosecution has not examined the tenants who had an occasion to see deceased Vaishali in hanging position and examined PW2 Kailas who got the knowledge about the same from those tenants. The pre and post conduct of the accused is natural. The Applicant-Accused has also tendered the explanation about the suicidal death of his wife by hanging herself to the ceiling fan of the roof.

3 The learned A.P.P. has strongly resisted the application on the ground that the Applicant-Accused was ill-treating his wife deceased Vaishali by suspecting about her character and used to beat her on that count. PW3 Dr. Sampat Kedare has expressed his opinion about the cause of death as asphyxia due to strangulation and further opined that the death

of Vaishali was homicidal. The Applicant-Accused has not explained the homicidal death of deceased Vaishali.

4 It appears that the prosecution entirely rest upon the circumstantial evidence. It is part of the evidence that the Applicant-Accused helped his brother-in-law PW1 Balaji to secure the employment in the Company where he was serving. Furthermore, Applicant-Accused also got employed deceased Vaishali in the same Company. After the death of deceased Vaishali, for the first time, PW1 Balaji has complained about ill-treatment being extended to deceased Vaishali by the Applicant-Accused by suspecting about her character. The Applicant-Accused has explained about the death of Vaishali as by hanging. Even in the postmortem examination Exh.27, the transverse legature marks around her neck have been noted. PW3 Dr. Sampat Kedare has also stated that except ligature marks, there were no other signs indicating use of force. Furthermore, the rope was found in three pieces. Furthermore, as per the contents of spot panchnama Exh.17, one shaft of the fan was found bend. Thus, considering the entire aspect of the case, we are inclined to grant bail to the Applicant with certain conditions. Hence, the following order :

ORDER

- (i) The application is hereby allowed.

(ii) The applicants-Accused Uttareshwar Lahu Tonge be released on bail on furnishing P.R. Bond in the sum of Rs. 30,000/- with one solvent surety in the like amount on the following condition.

(iii) The applicants shall attend to the concerned police station once in a month till disposal of the Appeal.

(iv) Substantive part of the sentence passed against the Applicant-Accused is hereby suspended till the disposal of the Appeal.

5 The application is disposed of accordingly.

(V.K. JADHAV, J.)

(INDRAJIT MAHANTY, J.)