

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1667 OF 2018
IN
CRIMINAL APPEAL NO. 1026 OF 2017

1. Bargalsiddha Dharmanna Padwale.

2. Shivaji Dharmanna Padwale. ... Applicants.

V/s.

State of Maharashtra. ... Respondent.

Mr.Ritesh Thobde with Mr.Sagar Tambe for the applicants.
Ms.P.P.Shinde, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 4th February 2019.

P.C. :

This is an application for suspension of sentence and for release of the applicants on bail.

The applicants are the original accused Nos.1 and 4.

2. Heard the learned counsel for the applicants and the learned APP for the State. Perused the record.

3. The deceased Ashwini was the wife of applicant No.1. It is the case of the prosecution that the applicants along with other accused persons used to cause undue harassment and used to demand a four wheeler (Tumtum) vehicle from the parents of deceased Ashwini. It is alleged that on 4th June 2014, the applicant No.1 in presence of witnesses

again made a demand of Tumtum from the parents of the deceased Ashwini and further told them that, if the demand is not fulfilled, he would go to any extent and he is not worried of going to jail. It is the prosecution case that on 5th June 2014, the accused persons poured kerosene on the person of Ashwini and ignited it. Ashwini suffered 100% burn injuries. Ashwini succumbed to the injuries on the spot and was declared dead by the Medical Officer when brought to the hospital.

4. As far as applicant No.2 i.e. original accused No.4 is concerned, the evidence on record indicates that the role attributed to him was of demand along with other accused persons i.e. his parents and the applicant No.1. It further, *prima facie*, appears that there is no evidence for attributing any overt act to applicant No.2 as far as commission of offence under section 302 is concerned and, therefore, we are inclined to release applicant No.2- Shivaji D. Padwale on bail.

5. As far as applicant No.1- Bargalsiddha D. Padwale is concerned, *prima facie*, it appears that there is sufficient evidence on record to show his clear complexity in the offence of making undue demand and causing harassment to the deceased and also the overt act at his instance. PW3- Amoghi Deshmukh in her evidence has brought on record the said fact. *Prima facie*, it appears to us that the evidence of Amoghi Deshmukh is unshaken in the cross-examination on vital aspects of the prosecution case. In view thereof, we are not inclined to grant bail to applicant No.1- Bargalsiddha D. Padwale.

Hence, the following order:

ORDER

- (i) The application for suspension of sentence and for release on bail of applicant No.1- Bargalsiddha Dharmanna Padwale is hereby rejected;

(ii) The application for suspension of sentence and for release of applicant No.2- Shivaji Dharmanna Padwale on bail is allowed on the following terms and conditions:

- (a) The substantive sentence imposed upon applicant No.2- Shivaji Dharmanna Padwale under the impugned judgment and order is hereby suspended during the pendency of the present appeal and he be released on bail on furnishing P.R.Bond of Rs.15,000/- with one or two local sureties in the like amount;
- (b) After the applicant No.2 is released on bail, the applicant No.2 shall attend the trial Court on every first Monday of January and July of the calendar year between 11.00 a.m. and 2.00 p.m. till the conclusion of appeal. If the said Monday falls on public holiday, then the applicant No.2 shall attend the concerned trial Court on the immediate next working day.

6. Application is partly allowed in the aforesaid terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)