

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

**CRIMINAL APPEAL NO.549 OF 2019
WITH
CRIMINAL APPLICATION NO.543 OF 2019**

Rakesh Baban Kumbhar Appellant/Applicant

Vs.

The State of Maharashtra Respondent

Mr.Nadeem Shaikh I/by Mr. Mateen Shaikh for the
Appellant/Applicant

Mr. S.R. Agarkar, APP for State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 16th April 2019

P.C.:

1 Heard. Appeal admit.

2 The above application is filed under Section 389 Code of Criminal Procedure. The applicant herein is convicted by the Additional Sessions Judge-6, Thane, vide judgment and order dated 22nd February 2019 thereby convicting the appellant-applicant for the

offence punishable under Section 306 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and fine of Rs.10,000/-, in default to suffer further imprisonment for six months in Sessions Case No. 213 of 2017.

3 Learned counsel for the appellant-applicant submits that the applicant was on bail during pendency of the trial and has not committed breach of any conditions imposed upon him. It is also submitted that the applicant has been sentenced to a short term sentence and that there is no possibility of the appeal being finally heard in the near future and hence the applicant is entitled to the extension of same relief during pendency of the appeal.

4 Prima facie, upon perusing the substantive evidence of the witnesses, it appears that the deceased-Kirti was in a Live-in Relationship with the present appellant-applicant. It is submitted by learned counsel for the applicant that the wife of the applicant was a good friend of the deceased. The applicant has one daughter. Three months prior to the incident, Kirti was residing with the applicant as

there was a love affair between them. It appears that a discordant note had struck between them and he had refused to marry her or continue with the relationship and hence, she has committed suicide. The case rests upon the dying declaration.

5 PW-11, Dr.Shilpa Vitthalrao Sahare has stated that initially Talathi from Ghodbunder Road had visited the hospital alongwith letter for recording her statement, however, after examination, she opined and endorsed on the letter that the patient was not able to give statement. It is the contention of the witness that at 6.00 pm., the patient was not in mental condition to give a statement. However, it appears from the records that the dying declaration has been made a basis for conviction. The statement upon which implicit reliance is being placed by the prosecution is recorded sometime prior to 8.00 pm.and thereafter the signature was obtained from the Doctor. It is on the basis of this evidence, that, the learned counsel for the applicant submits, that the very recording of dying declaration is doubtful. In view of above discussion, the applicant deserves to be enlarged on bail during pendency of the

appeal. In any case, the sentence imposed upon the applicant is a short term sentence. Hence, the following order :

ORDER

- i) The application is allowed and disposed of.
- ii) The substantive sentence imposed upon the applicant/appellant vide judgment and order dated 22nd February 2019 is hereby suspended.
- iii) The applicant/appellant be enlarged on bail on furnishing P.R. bond in the sum of Rs.20,000/- with one or more solvent sureties in the like amount.
- iv) The applicant/appellant shall be released on bail subject to payment of fine.
- v) The applicant/appellant shall report to the Court of Sessions, Thane, once in six months on the date assigned by the Sessions Judge.
- vi) Upon failure to attend any two consecutive dates, the Sessions Court shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(*Smt. Sadhana S. Jadhav, J*)