

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1079 OF 2019

IN

CRIMINAL APPEAL NO.708 OF 2018

JAVED KHALIL SHAIKH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Nitin Sejpal a/w. Mrs.Pooja Sejpal, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 26th AUGUST 2019

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/convicted accused no.1 on bail during pendency of the appeal filed by him. He along with co-accused, who are his father, mother as well as mediator/relative are convicted of offences punishable under Section 304B read with 34

of the Indian Penal Code as well as under Section 498 read with 34 of the Indian Penal Code by the learned trial court. Sentence of rigorous imprisonment of 10 years apart from imposition of fine of Rs.2,000/- for the offence punishable under Section 304B read with 34 of the Indian Penal Code is imposed on accused persons, apart from sentence of rigorous imprisonment of 1 year for the offence punishable under Section 498 read with 34 of the Indian Penal Code.

2 Heard the learned counsel appearing for the applicant/ convicted accused no.1. He drew my attention to the order dated 25th June 2019 passed by the co-ordinate Bench of this court (Coram : Dama Seshadri Naidu, J.) in Criminal Application No.923 of 2019 and argued that vide this order, co-accused nos.2 and 3 viz. father-in-law and mother-in-law of the deceased are released on bail. The learned counsel further argued that evidence appearing against the applicant/convicted accused no.1, who happens to be the husband, is exactly the same as is available against the father-in-law as well as mother-in-law, and

therefore, on the principle of parity, the applicant/convicted accused no.1 is entitled to be released on bail.

3 The learned APP could not point out any different role attributed to the applicant/convicted accused no.1 in the crime in question reflected from evidence adduced by the prosecution.

4 I have perused the evidence adduced by the prosecution and particularly that of PW1 Shabana Shaikh – sister, PW2 Mohammad Shafi Abdul Gaffar Ansari – maternal uncle and PW3 Ashraf Ansari – cousin brother of deceased Afroz. Evidence adduced by them as against the applicant/convicted accused no.1 is exactly similar to one which is available against the father-in-law and mother-in-law, who are already released on bail by co-ordinate Bench of this court vide order dated 25th June 2019 in Criminal Application No.923 of 2019. Hence, on the principle of parity, the applicant/convicted accused no.1 needs to be released on bail, and therefore, the order :

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant/convicted accused no.1 is suspended and the applicant/convicted accused no.1 is directed to be released on bail on his executing P.R.Bond in the sum of Rs.30,000/- and on his furnishing two sureties in like amount.
- iii) Pending the appeal, the applicant/convicted accused no.1 should not contact the First Informant or any other witness, or any member of the deceased victim's family, in any manner.
- iv) The applicant's failure to abide by these conditions will entail the prosecution to apply for cancellation of bail now granted to the applicant/convicted accused no.1.
- v) The application is, accordingly, disposed off.

(A. M. BADAR, J.)