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

***CRIMINAL APPLICATION NO.1251 OF 2018
(For Bail/Suspension of Sentence)
IN
CRIMINAL APPEAL NO.227 OF 2018***

Vinod Vyankatnarayan Chaudhari ...Applicant/Orig.Appellant No.1
Versus
The State of Maharashtra ...Respondent

Mr.Bhaves Thakur a/w Mr.Atul Daga i/b Mr.Ganesh & Co., for the
Applicant/Appellant.

Mr.S.V.Gavand, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th APRIL, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his
sentence and enlargement on bail, pending the hearing and final disposal of
his appeal.
3. Learned Counsel for the Applicant states that the applicant was

on bail, pending trial and that he has not abused or misused the liberty granted to him. He submitted that similarly placed co-accused – Vinaykumar Vyankatnarayan Chaudhari has been enlarged on bail by this Court (Coram:A.M.Badar,J.) vide order dated 8th June, 2018, passed in Criminal Application No.558 of 2018. He relied on para 7 of the said order dated 8th June, 2018, to show that whilst granting bail to co-accused Vinaykumar Vyankatnarayan Chaudhari, this Court observed that 'for making offence under Section 498A as well as Section 306 of the Indian Penal Code, there needs to be positive evidence of subjecting the married woman to cruelty as explained in Explanation-II of Section 498A apart from positive evidence of provocation or incitement to a married woman to indulge in self effacement'.

4. Learned A.P.P. does not dispute the fact that the applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him

5. Perused the papers. The applicant along with co-accused - Vinaykumar Vyankatnarayan Chaudhari, have been convicted by the

learned District Judge – 2 and Additional Sessions Judge, Kalyan, vide Judgment and Order dated 25th January, 2018, passed in Sessions Case No.50 of 2004, for the offences punishable under Sections 306, 498A r/w 34 of the Indian Penal Code and have been sentenced to suffer rigorous imprisonment for 3 years each and to pay fine of Rs.25,000/- each, in default, to suffer rigorous imprisonment for one month each, for the offence punishable under Section 498A r/w 34 of the Indian Penal Code and for the offence punishable under Section 306 r/w 34 of the Indian Penal have been sentenced to be suffer rigorous imprisonment for ten years each and to pay fine of Rs.25,000/- each, in default, to suffer rigorous imprisonment for three months each.

6. The applicant's appeal has been admitted by this Court vide order dated 14th March, 2018. It appears that deceased - Varsha was married to the applicant in 2003 and the couple was residing at Dombivali. On 25th July, 2003, deceased – Varsha hung herself in the matrimonial house and expired on 26th July, 2003. According to the prosecution, the applicant was insisting that deceased – Varsha's father's flat be transferred in his name. The applicant is also alleged to have demanded money. The

prosecution case rests entirely on circumstantial evidence. It is not in dispute that the applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him. Co-accused – Vinaykumar Vyankatnarayan Chaudhari i.e. applicant's brother has been enlarged on bail by this Court (Coram:A.M.Badar,J.) vide order dated 8th June, 2018. The applicant is in custody since 25th January, 2018.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two local solvent sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.