

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.178 OF 2019
IN CRIMINAL APPEAL NO. 117 OF 2019
(Noor Mohammad Shaikh Habib vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri P.H. Khobragade, Advocate (appointed) for
applicant.

Shri M.K. Pathan, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH AND
 PUSHPA V. GANEDIWALA, JJ.

DATED : JUNE 17, 2019

This application is for suspension of sentence of applicant, who came to be convicted by the trial Court for the offence punishable under Section 302 of Indian Penal Code.

During the course of hearing, Shri Khobragade, learned Counsel appointed for applicant, and Shri Pathan, learned Additional Public Prosecutor for respondent, pointed out that except for evidence in the nature of extra judicial confession by accused to P.W.6 Ravindra, Police Patil and P.W.11 Tourabi, there is no direct evidence against applicant.

Learned Counsel for the parties have also pointed out from the record that applicant had raised defence of insanity under Section 84 of Indian Penal Code before trial Court and the case of applicant

suggesting them that prior to incident he was not mentally stable. The learned trial Court has duly considered this aspect and found that at time of commencement of trial, applicant was mentally fit and, therefore, trial was commenced.

Admittedly, applicant has not examined any defence witness to establish that on the date of incident, he was mentally disturbed or was insane.

In the background of above stated facts, death of wife and minor son of applicant is found due to injuries sustained by them by axe, which is found to be seized from the spot and as per Chemical Analyser's report, is found having blood of group "A", which is of deceased. However, on perusal of record, it is noted that clothes of accused are neither seized nor any clothes of accused are found forwarded for analysis to Chemical Analyser. As such, except for having blood of group "A" on axe, which is of deceased, applicant's involvement cannot be said to be established from the Chemical Analyser's report.

Having considered aforesaid facts and as according to record, applicant is found to be in Jail from the date of his arrest, i.e. 23/10/2014, we find it necessary to expedite hearing of the appeal. Hence, following order :

The criminal application is dismissed. However, hearing of Criminal Appeal No.117/2019 is expedited. It be shown in the caption of "final hearing matters" in the week commencing from 5/8/2019, after

paper book is prepared.

The fee payable to learned Counsel appointed for applicant for this application is quantified as rupees fifteen hundred.

JUDGE

JUDGE

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