

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 1928 OF 2020

Indrasing Padkya Pawara

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Shri. S. U. Chaudhari, Advocate for the applicant

Shri. M. M. Nerlikar, APP for respondent/State

.....

WITH

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CORAM : RAVINDRA V. GHUGE

AND

B. U. DEBADWAR, JJ.

DATE : Tuesday, the 3rd November, 2020

PER COURT : -

1. The first application is for seeking condonation of delay of 936 days. The second application is a prayer for suspension of sentence and for enlarging the convict-applicant on bail. The appeal is directed against the Judgment and Order dated 06.02.2018 delivered by the learned Additional Sessions Judge, Shahada, thereby

convicting the accused and handing down the sentence of life imprisonment in Sessions Case No. 42 of 2016.

2. Though the learned Prosecutor has strenuously opposed the condonation of delay, we find that, this is the last Court in the State for the applicant and if the delay is not condoned, the doors of the Court would be closed and he would be precluded from challenging the sentence of life imprisonment. So also, though the delay of 936 days is quite large, we do not find that the applicant has deliberately caused the delay. So also, he would not draw any benefit or advantage from causing delay in the filing of his appeal as it would amount to hara-kiri if he deliberately delays the filing of his appeal.

3. In view of the above and as the accused has been convicted and is in jail since his arrest in 2016, we are not imposing cost. This application is allowed and the delay is condoned.

4. Considering the above, the appeal be registered. The learned Prosecutor waives service of notice on behalf of the State in the appeal.

5. The appeal is admitted and the respective parties waive service of notice on admission of the appeal.

6. Call for R & P in Sessions Case No. 42 of 2016 decided by the learned Additional Sessions Judge, Shahada, on 06.02.2018.

7. Insofar as Criminal Application No. 1929 of 2020 is concerned, the learned Advocate for the applicant submits that, the applicant has every hope of succeeding in the appeal. He is confident of pointing out the deficiencies in the trial and the evidence adduced against him. He has denied commission of the offence alleged against him. He has been in jail for the last four years and by suspending the sentence, he prays for enlarging him on bail.

8. The learned Prosecutor submits that, there are three eye witnesses in this case and there is sufficient evidence which establishes the guilt of the accused. He further submits that, the deceased Deepak had married Ms. Nisha against the will of her father and the accused-uncle. Both had eloped and had got secretly married away from their homes. After the news of the marriage was broken, the accused and the father of Nisha used to hold out serious threats of physical harm to the deceased. The marriage occurred in 2016 and the accused indulged in honour killing by approaching the deceased on 27.05.2016 at 06:00 p.m. in front of his house saying "*To ha mi*

aaj mar di” and pierced a knife, which he had brought along with him, right into the chest of the deceased and he fled. The knife used for stabbing the deceased was normally used for slaughtering goats. The murder weapon was seized. As this is a case of honour killing, no leniency deserves to be shown to the accused.

9. Considering the evidence adduced before the trial Court and three eye-witnesses who have stood by their testimony even in cross-examination, we do not find that this is a fit case wherein we could suspend the sentence. *Prima facie*, it appears that the murder of Deepak was a result of honour killing as the accused felt humiliated owing to their marriage. It has come on record that the villagers had persuaded the accused and the father of Nisha to settle the dispute as per the customs of their community. The deceased and his wife Nisha belong to the Adiwasi community. Despite intervention of the villagers, the accused did not appear to be pacified and his act is apparently an outcome of his revengeful attitude.

10. Considering the above, this application is rejected.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE