

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

**CRIMINAL APPLICATION NO. 534 OF 2019
IN
CRIMINAL APPEAL NO. 537 OF 2019**

Gulshad Naushad Qureshi .. Applicant
v/s.
The State of Maharashtra .. Respondent

Mr. Abdul Wahab Khan for the applicant
Mr. A.A. Palkar, APP for the respondent – State

CORAM : PRITHVIRAJ K. CHAVAN, J.

**RESERVED ON : 20th JANUARY, 2020
PRONOUNCED ON : 5th FEBRUARY, 2020**

P.C.

1. This is an application for suspension of execution of the substantive sentence passed by the Additional Sessions Judge, Mumbai wherein the applicant has been convicted and sentenced of the offences punishable under Sections 498A and 306 of the Indian Penal Code. He has been sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.2,000/- of an offence punishable under Section 498A of the IPC and Rigorous Imprisonment for 5 years with fine of Rs.2,000/- in default of payment of fine to undergo Rigorous Imprisonment for 6 months of

an offence punishable under Section 306 of the Indian Penal Code. The substantive sentences were directed to run concurrently. A set off of about 5 months has also been granted to the applicant under Section 428 of the Criminal Procedure Code.

2. I heard Mr. Khan Wahab, learned Counsel for the applicant. In short, it is his contention that the applicant is a young man who has been falsely implicated in the offences with which he has been charged and convicted. The evidence on record is insufficient as well as quite weak to prove the offences, in the sense that most of the evidence of the prosecution witnesses is nothing but material omissions which renders the prosecution's case unbelievable. He submits that during the course of trial, the applicant was on bail and there are no complaints of committing any breach in the terms and conditions of the bail. According to the learned Counsel, the applicant and the deceased wife were in love and, therefore, on 1st January, 2012 the deceased eloped with the applicant and got married with him. The applicant was working in a garment factory of his father-in-law. However, there was a complaint against the applicant that he used to eve tease other lady co-workers in the

factory and, therefore, he was removed from the job by his father-in-law. It is the case of the prosecution that since then the applicant started ill-treating and quarreling with the deceased on petty grounds. He was not doing any work. The deceased was being helped by her in-laws who used to pay some amount for the household expenses. There are allegations of physical and mental torture against the applicant.

3. The deceased hanged herself to the ceiling fan on the fateful day of 15th May, 2014.

4. My attention is drawn to paragraphs 2, 3, 4, 6, 8, 12 and 13 of PW-1 Javed Ghanchi - father of the deceased. No doubt, a bare look at the evidence of PW-1-Javed Ghanchi would reveal that his evidence is full of material omissions and, therefore, it can be said that there are chances of succeeding in the appeal. The learned Counsel has drawn my attention to the fact that PW-3 Vicky Srivastav, who was residing in the neighbourhood admitted during cross that he had cordial relations with the informant and that he had deposed as per the say of the informant.

5. The PW-3 – Vicky Srivastav, testified that deceased was not getting proper food as the applicant was not providing food grains or other essential house hold articles. She always used to sit outside the house and used to cry. This witness used to provide food and other articles intermittently. The deceased used to tell this witness about the quarrel between the applicant and herself and also about the physical and mental torture. These are also proved to be omissions.

6. Thus, the material witnesses namely; PW-1, PW-3 and PW-6 appears to have improved their versions and, therefore, there would be no point in incarcerating the applicant behind the bars as the chances of hearing the appeal finally are remote as it is an appeal of the year 2019. Though the learned APP opposed the release of the applicant pending the appeal, he could not say anything as regards material omissions brought to my notice by the learned Counsel for the applicant.

7. Having considered the over all circumstances, I am inclined to

release the applicant on bail pending the appeal. Now, to the order.

ORDER

1. The application is allowed.
2. Pending the hearing and disposal of the appeal, the execution of the substantive sentence stands suspended on the applicant furnishing a P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge, Mumbai.
3. The applicant shall not leave the jurisdiction of the Additional Sessions Judge, Mumbai without seeking prior permission.
4. The applicant shall attend this Court as and when directed.
5. Needless to state that in case of breach of any of the aforesaid conditions, the prosecution will be at liberty to pray for cancellation of his bail.
6. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)