

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

**INTERIM APPLICATION NO.507 OF 2019
IN
CRIMINAL APPEAL NO.1317 OF 2019**

Abdul Faruk Bargeer
(At present Kolhapur Central Jail)
Age : 33 Yrs. Occ. Nil.
R/o. Shaniwar Peth, Bagwan Galli,
Miraj Tal Miraj, Dist. Sangli. ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Kuldeep Patil i/b. Mr. Ranjeet H. Patil, Advocate for the
Applicant/Appellant.
Mr. A. R. Kapadnis, APP for Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th OCTOBER, 2020.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of appeal preferred by applicant challenging the Judgment and order dated 30th August, 2019 passed by the Additional Sessions Judge-2, Sangli.

2. The applicant has been convicted for offence punishable under Section 304-II of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for Ten years and to pay fine of Rs. 25,000/- He is also convicted for the offences punishable

under Sections 285, 286, 337 and 338 of Indian Penal Code. The applicant is sentenced to suffer imprisonment of Six months for the offences punishable under Sections 285, 286 and 337 of Indian Penal Code on each count. He is sentenced to suffer rigorous imprisonment for Two years for the offence punishable under Section 338 of Indian Penal Code.

3. The prosecution case is that, on 29th April, 2014 the first informant felt gas odour from room No.1 situated in chawl where she was residing. The room was locked. Altaf Yusuf Shaikh, who had locked the room was called. He opened lock of door with the help of key and entered into the room. The informant and her nephew was standing at the door. Altaf was doing something by bending over the cylinder and at that time explosion occurred. Nephew of the informant caught fire. He was shifted to hospital. Informant and her son sustained burn injury. Other persons in the vicinity also suffered burn injuries. Nephew of the deceased, Altaf Shaikh and one Mubarak died due to burn injuries. First Information Report (For short "FIR") was registered. The applicant was arraigned as accused No.1. Altaf was impleaded as Accused No.3, although he was dead. Accused No.4 - Sunil Kolpe died, during the pendency of proceedings and the case against him had abated. During investigation it was

allegedly revealed that, the chawl was owned by accused No.5. The accused No.1 with the help of co-accused was conducting business by storing gas cylinders in the chawl. Gas was provided to Rickshaw drivers illegally.

4. Learned counsel for the applicant submitted that, the applicant was on bail during trial. He has not misused the facility of bail. He has been taken in custody on conviction. For last one and half year he is in custody. The applicant was not present at the time of incident. Section 304-(II) is not attracted in this case. The incident of gas explosion had occurred, when Altaf tried to check the leakage of gas cylinder. Knowledge which is required to constitute the offence under Section 304-(II) cannot be attributed to the applicant, as the incident had occurred suddenly when accused No.3 tried to check leakage of gas. There is no evidence to show that, the applicant was conducting business in the chawl by storing gas cylinder. There is no evidence to establish that the applicant was conducting illegal business. The prosecution is relying on dying declaration of two witnesses, which suffers from serious infirmities.

5. Learned APP submitted that the applicant was conducting business in the chawl premises by storing gas cylinders. Three persons died in the incident and others were injured. Dying

declaration of Mubarak and Altaf Sheikh mentions that, the room was taken on rent by accused and business was conducted by accused No.1. The applicant ought to have knowledge that, storage of gas cylinders in the residential premises may cause such mishap.

6. The applicant was on bail during the trial. The mother of applicant has submitted affidavit dated 28th October, 2020 stating that, during the pendency of trial, the applicant was on bail and he has been taken in custody after conviction. Affidavit is taken on record. The prosecution was initiated against five accused. Although, Altaf Shaikh died in the incident while operating gas cylinder, he was impleaded as accused No.3 by showing him as deceased. Accused No.4 died during pendency of trial. Accused No.5 was owner of chawl. Accused No.5 and accused No. 2 were acquitted. The trial Court had observed that, the applicant was in possession of the room owned by accused No.5 and accused No.3 was working with the applicant. There is no evidence in connection with accused No.2 that he was engaged in business with accused No.1. The trial Court further observed that, the accused No.1 had knowledge of storing and having the stock of LPG may any time result into explosion causing injury and lost of life. Though accused No.2 had no intention to kill the victims, he had sufficient knowledge and awareness of

consequences of his act. The applicant was not present at the place of incident when the explosion had occurred. The incident did not occur while conducting any act filling the gas in the vehicle. It appears that, the incident had occurred due to gas cylinder leakage. There is serious challenge to the applicability of Section 304(II) of IPC. PW-2 has stated that, accused No.5 is the owner of chawl. The incident had occurred when Altaf was doing something by bending over the cylinder. Police took her signature on ready complaint which was prepared by them. PW-3 has stated that, she do not know what was going on in room No.1. She has not referred to role of applicant. PW-4 is mother of Altaf Shaikh. She stated that, four days prior to incident accused No.1 was residing in room No.1. He was doing business of selling LPG gas. She never entered into room No.1. PW-6 recorded dying declaration of Altaf Shaikh. According to him, Altaf disclosed that, Abdul had taken room on rent and selling LPG gas cylinders. He was employed by Abdul. He opened room and tried to remove the regulator of gas cylinder, at that time there was a blast. He sustained burn injuries. There is no endorsement on dying declaration that, he explained the contents of statement to Altaf in Hindi. Thumb impression of Altaf was not attested. There is no reason for him to explain the contents of statement to Altaf in Urdu. Exh.74 (dying declaration) is not in his handwriting. PW-8 recorded

dying declaration of Mubarak Bagwan. He deposed that, Altaf opened the door and went inside the room. He also went inside along with Altaf. There was a blast. He sustained injury. He did not obtain signature of doctor at the end of the statement. Dying declaration is not in his handwriting. From the dying declaration it cannot transpire that who has written it.

7. Considering the aforesaid circumstances, sentence of imprisonment can be suspended. Hence, I pass the following order.

ORDER

- i) The sentence of imprisonment imposed vide Judgment and order dated 30th August, 2019 passed by the Additional Sessions Judge-2, Sangli, in Sessions Case No. 254 of 2014 is suspended, during the pendency of appeal preferred by the applicant.
- ii) The applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- iii) The applicant is permitted to deposit cash security in the sum of Rs.25,000/- for a period of twelve weeks in lieu of surety.
- iv) The applicant shall report concerned police station once in month on every first Saturday of the month between 11.00 a.m. to 1.00 p.m. till further order.
- v) Application stands disposed of accordingly.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)