

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

**902 CRIMINAL APPLICATION NO.435 OF 2020
IN APEALST/120/2020 WITH APPLN/434/2020 IN
APEALST/120/2020**

SANTOSH S/O. MANGALPRASAD MORYA
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. A. Y. Pandule
APP for Respondent -State: Mr. K. S. Patil
Advocate Mr. S. J Salunke, appointed as amicus
curiae

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**CORAM : RAVINDRA V. GHUGE
 &
 B. U. DEBADWAR, JJ.**

DATE :- 5th February, 2021

Per Court :-

1. The applicant prays for condonation of delay of 1336 days caused in challenging the judgment and order dated 04.04.2016, delivered by the learned Additional Sessions Judge-2, Kopargaon in Sessions Case No. 67 of 2014 by which, the applicant has been convicted for having committed an offence punishable under Section 302 of IPC and is sentenced to suffer imprisonment for life.
2. We have heard the learned counsel for the applicant and the learned prosecutor.

3. We have no hesitation in observing that there is hardly any reason set out in the application which would convince us to condone the delay of 1336 days. We, however, are of the view that as the applicant has been convicted by the trial court and if the delay caused is not condoned, he would lose a valuable right of filing an appeal for challenging his conviction and the quantum of the sentence. He would have no opportunity to question the legality and validity of the impugned judgment.

4. The applicant has been held guilty of murdering his wife, a son and a daughter by taking them on a pilgrimage to the pilgrimage city of Shirdi. He had checked into room no.201 of hotel Neeta International and it is proved that he has killed his wife and children, one by one, in the said room. The trial court, while dealing with the gravity of the offence and while assessing as to whether the case would fall within the parameters of a 'rarest of the rare cases', has concluded that the applicant made no attempt to commit suicide and there was no reason that could prevent the accused from committing suicide. However, the law laid down by the Hon'ble Apex Court in ***Amarsing Yadeo Vs. State of Uttar Pradesh, AIR 2014 SC 2486***, wherein a police officer had killed his wife and children by

locking them inside in a Maruti van and setting the van ablaze, which was held to be not a 'rarest of the rare cases', was followed by the trial court and granted the of sentence simple imprisonment for life.

5. In view of the above, this application is allowed. The criminal appeal Stamp No. 120 of 2020 shall be registered.

6. Considering the facts of the case, we deem it appropriate to appoint learned advocate Shri S. J. Salunke, to represent the appellant along with Advocate Shri Pandule in this matter, through High Court Legal Services Sub Committee, Aurangabad.

7. The learned prosecutor submits that he would take instructions in this matter and as it appears that a lesser punishment is awarded to the appellant, the State is likely to take steps for filing an appeal for seeking enhancement of the sentence.

8. In view of the above, we list this appeal for admission hearing on 8th March, 2021.

9. The trial court i.e. 2nd Additional Sessions Court, Kopargaon shall transmit the R & P in Sessions Case No. 67 of 2014 decided on 04.04.2016, as expeditiously as possible and preferably on or before 5th March, 2021 through a special messenger.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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