

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

939 CRIMINAL APPLICATION NO.1300 OF 2020

IN CRIMINAL APPEAL NO. 423 OF 2020

Tukaram s/o Dhondiba Wankhede : Applicant

VERSUS

The State of Maharashtra & another : Respondents

Mr. P. P. More, Advocate for the applicant/appellant

Mr. S. D. Ghayal, APP for the Respondents State

CORAM : V. K. JADHAV &
SHRIKANT D. KULKARNI, JJ.

DATE : 25th June, 2021.

ORDER:

1. In pending Criminal Appeal, preferred against the judgment and order of conviction dated 28.05.2020 passed by the learned Additional Sessions Judge, Latur in Sessions Case No. 34 of 2018 convicting thereby the applicant accused for the offence punishable under section 302 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.5000/- and in default, simple imprisonment of one month, the applicant/original accused has preferred this application for release on bail and for suspension of substantive part of the sentence.

2. The learned counsel for the applicant/original accused Mr. More submits that the prosecution case entirely rests upon the oral dying declaration allegedly made by the deceased to his son and there is no direct evidence in the case. The learned counsel for the applicant submits that PW-3 was the first person to see deceased Namdeo in injured condition. Thereafter, PW-3 Balu had called son of deceased namely

Abhijit. PW-3 Balu has deposed that deceased Namdeo was found in injured condition and he was not even in a position to speak. He was unconscious. Thereafter, PW-3 Balu went towards his house. The said Abhijit again came to the house of PW-3 Balu whose house is situated adjacent to the house of deceased and informed that his father deceased Namdeo did not wake up. Consequently, at the instance of Abhijit, PW3 Balu had called the informant PW-4 Dnyaneshwar, son of the deceased. The learned counsel submits that even the wife of the deceased i.e. PW8 Rukminibai has also admitted in her cross examination that when PW4 Dnyaneshwar/ informant came, that time her husband was in unconscious condition. The learned counsel submits that thus, the circumstance of oral dying declaration by the deceased before his son informant Dnyaneshwar appears to be doubtful. There is no further connecting evidence against the applicant.

3. The learned APP has strongly resisted the application on the ground that there is reliable and trustworthy evidence indicating that deceased has made a oral dying declaration before his son Dnyaneshwar. Learned APP submits that deceased Namdeo has told PW4 Dnyaneshwar that the applicant Tukaram has assaulted him with the knife for the reason that deceased Namdeo used to talk with his wife. Even deceased Namdeo informed to his son PW4 Dnyaneshwar that he has been feeling giddiness and he be taken to the Hospital.

4. The learned APP submits that there is a motive for committing the murder. The learned APP submits that there are in all 16 external injuries

on the person of the deceased and out of that, 8 injuries are either incise wounds or the stab injuries. The learned APP submits that blood stained clothes of the applicant came to be seized and the human blood was found on his clothes. The learned APP submits that even the weapon knife came to be recovered at the instance of the applicant and human blood was also found on it. The learned APP submits that the applicant was under trial prisoner during the course of the trial. The applicant may not be released on bail.

5. We have carefully gone through the notes of the evidence. It appears that the prosecution case entirely rests upon the oral dying declaration. We have also gone through the deposition of PW-3 Balu (neighbour) and PW-8 Rukminibai (wife of the deceased). The prosecution has not examined another son of the deceased namely Abhijit.

6. The wife of the deceased PW-8 Rukminibai has admitted in her cross examination that when PW8 Dnyaneshwar (informant) came, that time her husband was in unconscious condition. It further appears from the postmortem examination notes and evidence of PW-6 Dr. Dharmraj Dudde that the external injuries in the form of stab wounds, incise wounds are mainly on the vital organs. Moreover, considering the nature of the injuries, there must have been profuse bleeding internally and externally. Thus, considering the entire aspects of the case, particularly the fact that the prosecution case entirely rests upon the oral dying declaration, which is under cloud, we are inclined to release the applicant on bail. Hence the following order:

ORDER

- (1) The Criminal application is hereby allowed.
- (2) The substantive part of sentence vide judgment and order of conviction dated 28.05.2020 passed by the learned Additional Sessions Judge, Latur in Sessions Case No. 34 of 2018, is hereby suspended till disposal of the appeal and till then, the applicant Tukaram s/o Dhondiba Wankhede be released on bail on his furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety of the like amount.
- (3) The application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)**(V. K. JADHAV, J.)**

JPC