

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL APPLICATION NO.1330 OF 2021
IN CRIMINAL APPEAL/145/2021

BHAGYASHREE RAMANAND BHOLE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr Shailendra S. Gangakhedkar
APP for Respondent-State: Mr Rajendra V. Dasalkar

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 14th SEPTEMBER, 2021

PER COURT :

1. Pending Criminal Appeal No. 145 of 2021 preferred against the judgment and order passed by the learned Additional Sessions Judge, Nanded dated 10.02.2021 in Sessions case No.90/2016 convicting the applicant/original accused No. 2 for having committed the offence punishable under section 302 read with section 34 of I.P.C. and sentencing her to suffer R.I. for life and pay fine of Rs.5,000/-, in default to suffer S.I. for six months, the applicant/original accused No.2 has preferred this application for suspension of substantive part of the sentence and for bail.

2. The learned counsel for the applicant/accused No. 2 submits that the prosecution case rests upon two dying declarations Exh.59 and Exh. 85 respectively. The learned counsel submits that Exh.85 came to be recorded by PW 8 P.S.I. Mr G.J. Kshirsagar and Exh. 59 came to be recorded by Special Judicial Magistrate PW 4 - Mohd. Iftekhar Mohiuddin.

The learned counsel submits that there is mark inconsistency between these two dying declarations. The learned counsel submits that it appears from the allegations made in both dying declarations, so also, from the evidence of PW 1, who claims himself to be the witness rushed to the spot immediately after the incident, the said incident has taken place without any premeditation as of sudden in the heat of anger. The learned counsel submits that even though, the applicant/original accused No. 2 was allegedly present at the time of incident, however, the entire role was ascribed to accused No.1. The learned counsel submits that it is not clear from the prosecution evidence that the applicant/accused No.2 had knowledge that the co-accused was having the knife in his possession and he was likely to use the said knife in the quarrel, which has taken place as of sudden. The learned counsel submits that even it appears from the prosecution evidence that there was no intention to commit murder as such. The deceased Parmeshwar died 12 days after the incident and the cause of death is septicaemia in an operated case of stab injury to abdomen. The learned counsel submits that the applicant/original accused No.2 was on bail during trial.

3. The learned A.P.P. submits that there were illicit sexual relations between the applicants and even on one previous occasion, the deceased along with some other residents of the area seen co-accused Dhananjay when he had allegedly entered in the house of applicant/accused No. 2. The learned A.P.P. submits that since then, the applicant had a grudge against the deceased Parmeshwar and in consequence thereof, the incident had taken place. Both the dying declarations are

consistent on material part. PW 1 - Dhammapal Sheshrao Kamble happened to be the real brother of the deceased Parmeshwar rushed to the spot after the incident and had witnessed that both the accused were dragging the deceased. The learned A.P.P. submits that the applicant/accused No.2 may not be released on bail by suspending the substantive part of sentence.

4. It appears that the prosecution case mainly rests upon the two dying declarations. So far as the dying declaration Exh.59 recorded by the Special Judicial Magistrate, no specific act was ascribed to the applicant/accused No.2 as against the dying declaration Exh. 85 recorded by PW 8 PSI G.J. Kshirsagar. Apart from this, it appears from the prosecution evidence that the incident had taken place without any premeditation as of sudden. We do not find any evidence suggesting that the present applicant/original accused No.2 had knowledge that the co-accused was having knife in his possession and he was likely to use the said knife in the incident which allegedly taken place as of sudden without any premeditation. It further appears that the co-accused Dhananjay as of sudden took out the knife and inflicted blows of the knife on the person of the deceased. Furthermore, co-accused had pushed deceased in such a manner that the deceased dashed against the standing pole and sustained injuries on his head. Furthermore, the cause of death is septicaemia in an operated case of stab injury to abdomen and the applicant/accused No. 2 was on bail during the trial. Thus, considering the entire aspect of the case, we are inclined to release the applicant/accused No. 2 on bail by suspending the substantive part of the sentence. Hence,

the following order :-

ORDER

- (I) The criminal application is hereby allowed.
- (II) Pending the Criminal Appeal No. 145/2021 preferred against the Judgment and order of conviction passed by the Additional Sessions Judge, Nanded dated 10.02.2021 in Sessions Case No. 90/2016, substantive part of the sentence is hereby suspended and till then, the applicant/original accused No. 2 - Bhagyashri Ramanand Bhole be released on bail on furnishing personal bond of Rs. 20,000/- (Rupees Twenty Thousand) with one solvent surety of the like amount.
- (III) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

mta