

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

CRIMINAL APPLICATION NO. 1331 OF 2021
IN APEAL/223/2021 WITH APEAL/223/2021

BALAJI FULCHAND SARJE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. P.P. More.
APP for Respondent : Mr. S.P. Deshmukh.

**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATE : 28.10.2021.**

Per Court :

1. Pending Criminal Appeal No. 223/2021, preferred against the judgment and order of conviction passed by the Sessions Judge, Latur, dated 24.03.2021, in Sessions Case No. 57/2020, convicting thereby the accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs. 10,000/- in default R.I for six months. The applicant / accused has preferred this application for suspension of substantive part of the sentence and for bail.
2. The prosecution story in brief is that the applicant/accused has committed the murder of his cousin namely Tushar Sarje on

21.12.2019.

3. Learned counsel for the applicant / accused submits that the prosecution case rests upon the circumstantial evidence and there is no direct evidence in this case. The learned counsel submits that the prosecution case mainly rests upon the oral dying declaration allegedly made by the deceased before a third person and also to his cousin on a voice call. The learned counsel submits that if the case rests upon circumstantial evidence, the motive plays the great role. In the instant case, there was no motive for the applicant / accused to commit the murder of his cousin. Learned counsel submits that the prosecution has also brought on record certain circumstances indicating that the deceased was lastly seen alive in the company of the applicant. The learned counsel submits that it appears from the prosecution evidence that the incident has taken place as of sudden without any premeditation and upon quarrel. The learned counsel for the applicant / accused has also pointed out that it is a case of single blow by knife and as such, it cannot be inferred that there was an intention to commit the murder. The learned counsel submits that even though the weapon knife allegedly seized at the instance of the applicant /

accused, however, no blood was found on the said knife. The learned counsel submits that even the CA report is also negative. There was no blood on the clothes of appellant / accused seized during the course of investigation. The learned counsel submits that though the applicant / accused was not on bail during trial, however, there are no antecedents and considering that the entire prosecution case rests upon the circumstantial evidence, the applicant / accused may be released on bail by suspending the substantive part of the sentence. The applicant / accused has deposited fine amount before the trial Court.

4. Learned APP has strongly resisted the application on the ground that though the prosecution case rests upon the circumstantial evidence, however, the prosecution has proved the oral dying declarations made by deceased before two witnesses. The prosecution has also established that deceased was lastly seen alive in the company of applicant / accused just prior to the alleged incident. The learned APP submits that the trial Court has thus rightly appreciated the circumstantial evidence and convicted the applicant / accused. The applicant / accused has not made out any case to release him on bail by

suspending the substantive part of the sentence.

5. We have carefully gone through the notes of evidence and the record of the proceedings. The prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. As per the prosecution case deceased Tushar had made oral dying declaration before P.W. 6 – Sambhaji Fagare, who is the road contractor. On 21.12.2019 at about 03:00 p.m. to 03:30 p.m., P.W. No. 6 - Sambhaji noticed that deceased Tushar was lying in injured condition by the side of the road. It further appears that deceased Tushar had also made dying declaration on a voice call to P.W. 2 – Nitin Sarje, who happened to be his cousin. It appears on 21.12.2019, at about 01:42 p.m. deceased Tushar had made a video call to P.W. 2 – Nitin Sarje and at that time P.W. 2 - Nitin Sarje had noticed that the applicant accused Balaji and deceased Tushar were consuming liquor in a Jowar crop field. P.W. 2 – Nitin Sarje, there upon told them to consume less liquor and return to the house as early as possible. It appears from the evidence of P.W. 9 – Dr. Indrajeet Lakade, who has conducted the postmortem examination of the dead body of deceased Tushar, that it is a case of single stab wound. Thus considering the evidence of

P.W. 2 - Nitin Sarje about the video call made by deceased Tushar to him on 21.12.2019 at about 01:42 p.m. when deceased Tushar and applicant were consuming liquor in Jowar crop field, the possibility of an instant quarrel without any premeditation cannot be ruled out. It is also not disputed that there was no motive for the applicant/accused to commit the murder of his own cousin. Furthermore, it is a case of single blow and the possibility cannot be ruled out that a heat of anger during the course of the quarrel, the single blow of knife was given. It is also cannot be ignored that just prior to the alleged incident deceased Tushar and applicant were consuming the liquor in Jowar crop field and they were enjoying their private party. There are no antecedents. Even though the applicant / accused was not on bail during the course of the trial, however, considering the evidence as against him, we are inclined to release the applicant on bail by suspending substantive part of the sentence. We pass the following order :

ORDER

- i. The application is hereby allowed.
- ii. Pending Criminal Appeal No. 223/2021, preferred against

the judgment and the order of conviction dated 24.03.2021, passed by the Sessions Judge, Latur in Sessions Case No. 57/2020, the substantive part of the sentence passed against the appellant / accused to suffer the imprisonment for life is hereby suspended and till then the applicant / accused Balaji s/o. Fulchand Sarje, be released on bail on furnishing Personal bond in the sum of Rs. 20,000/- (Rupees twenty thousand) with one solvent surety in the like amount.

iii. Record and proceedings shall be sent back to the trial Court forthwith for preparation of the paper book as per the rules.

iv. Application is accordingly, disposed of.

(SANDIPKUMAR C. MORE, J.)

(V .K. JADHAV, J.)