

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

**917 CRIMINAL APPLICATION NO.1828 OF 2020
IN
CRIMINAL APPEAL NO.542 OF 2020**

**ANIL TUKARAM KHONDLE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. V.B. Patil, Advocate for applicants-appellants

Mr. A.M. Phule, APP for respondent/State

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th JANUARY, 2021.

ORDER :

1 Present application has been filed for suspension of sentence by the applicants. The applicants/appellants in Criminal Appeal No.542 of 2020 have been convicted by learned Additional Sessions Judge, Bhusawal on 05.10.2020 in Sessions Case No.37/2017. They have been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/- each, in default to suffer simple imprisonment for one month for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code. They have been further sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.10,000/- each, in default to suffer simple

imprisonment for one month for the offence punishable under Section 304-B read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. V.B. Patil for applicants/appellants and learned APP Mr. A.M. Phule for the respondent/State.

3 It has been vehemently submitted on behalf of the applicants that deceased Yogita was the wife of applicant No.1. Their marriage was performed in May, 2011. Yogita expired on 16.03.2017 and according to the prosecution, she had consumed poison. The Post Mortem Report would show that the definite opinion of probable cause of death was not given. The viscera was preserved, and therefore, the opinion was reserved. Final opinion has not been given. Though it appears from the C.A. report that the plastic bottle (Exh.3) contained Organophosphorous insecticide by name MONOCROTOPHOS (NUVACRON), the viscera report appears to have not been produced. The prosecution had come with the case that informant, who is the mother of the deceased had received compensation under Land Acquisition Act, 1894 to the extent of Rs.7,00,000/-, and thereafter, both the accused, who are the husband and mother-in-law of the deceased, started harassing her for bringing amount of Rs.2,00,000/- for the repairing of their house. Informant has stated that she had given amount of Rs.50,000/- for the said cause, however, still there was demand and ill-treatment to the

deceased for Rs.1,50,000/-. In fact, the prosecution had invoked Section 306 of the Indian Penal Code also and the reason for committing suicide by deceased is not known; yet, the conviction is under Section 304-B and 498-A of the Indian Penal Code. Both the appellants have been acquitted for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. Under these circumstances, there is every hope for the appellants in the appeal. It would take time to this Court to hear and dispose of the appeal, and therefore, till then the sentence be suspended. The appellants were on bail through out the trial.

4 Per contra, the learned APP strongly opposed the application and submitted that the Trial Court has scanned the evidence properly. The death of Yogita had occurred in the house, and therefore, the accused persons should have disclosed the reason for committing suicide by the deceased. Statement of the accused under Section 313 of the Code of Criminal Procedure is very much silent on that point, and therefore, the learned Trial Judge has rightly convicted them for the offence punishable under Section 304-B of the Indian Penal Code by invoking presumption under Section 113(B) of the Indian Evidence Act.

5 At the outset, the points, which are in favour of the applicants are that the sentence, that has been awarded by the learned Trial Judge, is

small sentence i.e. below 10 years and in view of **Kiran Kumar vs. State of M.P., (2001) 9 SCC 211**, a case may be made out for grant of suspension of sentence, when this Court cannot take up a matter early for final disposal. The second point, that is in favour of the applicants is that they were on bail throughout the trial. Now, as regards the merits of the case is concerned, the appellants have acquitted of the offence punishable under Section 306 of the Indian Penal Code and the final report regarding cause of death of the deceased appears to have not been produced. Now, whether admission of the accused in respect of documents like Post Mortem Report, Spot Panchnama can be taken against the present applicants, is a question, and therefore, in view of all these aspects when there is no documentary evidence regarding exchange of amount by the informant to the accused persons and there is only oral evidence in respect of ill-treatment, case is made out to suspend the sentence till the hearing and final disposal of the appeal.

6 Hence, the following order.

ORDER

1 The Criminal Application stands allowed.

2 The substantive sentence imposed on the applicants/appellants by the learned Additional Sessions Judge, Bhusawal vide Judgment and order

dated 05.10.2020 in Sessions Case No.37 of 2017, is hereby suspended till hearing and final disposal of Criminal Appeal No.542 of 2020.

3 The applicants viz. Anil Tukaram Khondle and Yashodabai Tukaram Khondle be released on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) each.

4 The applicants shall not commit any criminal activity.

5 The applicants shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date they tender bail papers and thereafter, the Trial Judge to fix dates for their subsequent appearances.

6 In case of two consecutive defaults on the part of the applicants to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicants.

7 Bail before the Trial Court.

(Smt. Vibha Kankanwadi, J.)