

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1391 OF 2021
IN
CRIMINAL APPEAL NO.430 OF 2021**

Namdeo Ramchandra Chormule

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Abhishek Avachat for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 17th JULY, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive order of sentence imposed vide judgment dated 04/03/2020 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.267 of 2018 and to enlarge the Applicant on bail.

2. The Applicant was prosecuted for offences under Sections 307 and 504 of the Indian Penal Code, 1860. It is the case of the prosecution that the Applicant attempted to commit murder of his wife by administering poison. The Trial Court relied upon the evidence of

the victim as well as the medical evidence and CA report and held the Applicant guilty of offences punishable under Section 307 the IPC and sentenced to suffer rigorous imprisonment for a period of ten years and fine of Rs.10,000/- i/d. to undergo further rigorous imprisonment for one year. The Applicant is also convicted for offence punishable under Section 504 of the IPC and sentenced to suffer simple imprisonment for the period of two years.

3. The learned counsel for the Applicant submits that there is no material to connect the Applicant with the said crime. He submits that the offence would fall under provision of Section 308 of the IPC and not under Section 307. He has relied upon the decision of the Apex Court in ***Bhagwan Rama Shinde Gosai and Ors. vs. State of Gujarat, (1999) 4 SCC 421*** to contend that the prayer for suspension of sentence should be considered liberally.

4. Learned APP contends that there is cogent and conclusive evidence to prove that the Applicant had administered poison to his wife. He submits that the Applicant, who was released on bail during pendency of the trial, had violated the terms and conditions of the bail and came to be arrested on 08/03/2019. Learned APP further states that considering the past conduct the possibility of the Applicant not

being available cannot be ruled out.

5. I have perused the records and considered the submissions advanced by learned counsel for the Applicant and the learned APP for the Respondent-State.

6. The crime against the Applicant was registered pursuant to the FIR at Exhibit -18 lodged by his wife. The evidence of the first informant vis-a-vis FIR at Exhibit-18 indicates that the accused used to suspect her character and would constantly quarrel with her. The victim has alleged that on the relevant date the Applicant came home under the influence of alcohol. He abused her throughout the night. At about 9.00 a.m. the Applicant threatened to kill her. He brought a bottle of poison, which was in the house, sat on her chest and forcibly administered poison to her. The first informant was unconscious and was shifted to the civil hospital -Solapur by her relatives. Her evidence further indicates that even on previous occasion, in an attempt to set her ablaze, the Applicant had poured kerosene on her person. Crime was registered against him regarding the said incident but, he was acquitted.

7. The medical evidence as well as the CA report corroborates

the statement of the victim. The evidence of PW4 -Dr. Dhadake indicates that the first informant was brought to the hospital with a history of administering poison. She was admitted in the hospital and treated for poisoning by Delta Methrine. The investigating Officer had seized the bottle, allegedly containing the poison, in presence of panchas and referred the same as well as the stomach wash for analyses to C.A. Pune. The C.A report reveals that the bottle contained pyrethroid insecticide Deltamethrin. The stomach wash also tested positive for the same insecticide.

8. The evidence on record thus, prima facie proves involvement of the Applicant in committing crime under Section 307 of the IPC. The records also reveal that the Applicant was released on bail pending trial. He had violated the terms and conditions of the bail and his presence had to be secured on 08/03/2019 through non-bailable warrant.

9. In ***Bhagwan Rama Shinde*** (supra) the Apex Court has observed that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered liberally, unless there are exceptional circumstances. It is held that, if for any reason the

sentence of a limited duration cannot be suspended, every endeavour should be made to dispose of the appeal on merits, moreso, when a motion for expeditious hearing of the appeal is made in such cases.

10. In the instant case, the nature of the allegations levelled against the Applicant, his relationship with the victim as well as misuse of the liberty granted to him, are the circumstances, which do not justify suspension of sentence and enlargement of the Applicant on bail. Hence, the application is dismissed. Liberty is granted to the Applicant to move for expeditious hearing of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)