

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1394 OF 2021
IN
CRIMINAL APPEAL NO. 449 OF 2021

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Damyanti Raju Yadav

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. M.A. Patil for the Applicant.

Mrs. M.M. Deshmukh, APP for the Respondent/State.

CORAM : NITIN JAMDAR AND
C.V. BHADANG, JJ.

DATE : 24 AUGUST 2021

P.C.

. By this application, the Applicant/accused No.2 is seeking suspension of sentence and release on bail. The Applicant and co-accused Santosh Kapse were tried for the offence punishable under Section 302 and 201 of IPC for having intentionally caused the death of one Sushant More and for having disposed of the dead body with an intention to screen themselves from the said offence.

2. The prosecution case is that the Applicant was earlier working with the father of the deceased, who was working as a

Mason. The deceased started harassing the Applicant and used to threaten her and also assault and abuse her. In order to save herself, the Applicant shifted to Vathar. However, the deceased continued to harass the Applicant even at Vathar. A day prior to the incident, the deceased is alleged to have threatened the Applicant on phone. In the meantime, the Applicant was working as a labourer in the hotel 'Nisarg' run by the accused No.1 Santosh Kapse. After the closure of the said hotel, the accused No.1 along with the present Applicant were working with hotel 'Ya Raoji' at Vathar. As the deceased was threatening the Applicant, the accused No.1 was staying with the Applicant since about two months prior to the incident.

3. On 23 June 2014 between 7.00 p.m. to 11.00 p.m., the deceased is alleged to have threatened the Applicant with life on phone. The Applicant and the co-accused Santosh Kapse made an attempt to report the said incident to the police, however according to them, they could not get a conveyance from Vathar bus stand. Hence, they returned to their house. The material incident is alleged to have happened at 4 to 4.30 a.m. on 24 June 2014, when the deceased came to the house of the Applicant. The accused No.1 Santosh was at that time with the present Applicant in her house. Apprehending danger, the Applicant let out the accused Santosh from rear door. However, the deceased came in the house of the Applicant and assaulted the Applicant and the co-accused with bricks lying in the backyard. It is said

that the accused Santosh took a cricket bat lying there and assaulted the deceased Sushant More on his head, as a result of which, he fell down and succumbed to the injuries. The Applicant and the co-accused took the dead body of Sushant on a motorcycle and threw it in shrubs at Nilewadi on 25 June 2014.

4. PW-10 Shivaji Kumbhar stated that he was staying near the house of Pandharinath Kumbhar in whose house the Applicant was residing as a tenant and where the incident is alleged to have happened. PW-10 stated that on 24 June 2014 at about 3.00 to 4.00 a.m., he had heard a shout of a person from the house of the Applicant and on inquiry, the Applicant informed that nothing had happened. It further appears that during the course of the investigation, the confessional statements of present Applicant and the co-accused came to be recorded by the Magistrate. The learned Sessions Judge has convicted the Applicant under Section 302 and 201 of IPC and she has been sentenced to suffer imprisonment for life under Section 302 of IPC and rigorous imprisonment for 7 years under Section 201 of IPC.

5. We have heard the learned counsel for the Applicant and the learned APP. Perused record.

6. It is submitted by the learned counsel for the Applicant that there is no direct evidence of any assault by the Applicant on the

deceased. It is submitted that the Applicant was on bail during the course of trial. It is submitted that even as per the prosecution case, it was the deceased who came to the house of the Applicant in the earlier hours of 24 June 2014 and the Applicant had no intention or motive to cause his death.

7. The learned APP has submitted that the offence is serious and there are confessional statements made by the Applicant and the co-accused.

8. We have considered the submissions made. Prima facie, it appears that according to the prosecution, the deceased was harassing the Applicant and had come to her house in the early hours of 24 June 2014, where the Applicant along with co-accused Santosh Kapse were present. At this stage, it is neither necessary, nor appropriate to appreciate the evidence in detail. Suffice it to mention that even going by the confessional statement, predominant role of the Applicant is in the disposal of the dead body in order to cause disappearance of the evidence and not the assault on the deceased. There is no direct evidence to show that the Applicant was responsible for the assault on the deceased. It is the deceased who had come to the house of the Applicant. Thus, *prima facie*, no intention to cause death can be attributed to the Applicant. The Applicant was on bail during the course of the trial.

9. Apart from the above, there is an additional circumstance, namely the Applicant would be entitled to benefit of the spirit of the first proviso to Sub-Section 1 of Section 437 of Cr.P.C. In such circumstances, the following order is passed.

ORDER

(i) The substantive sentence awarded to the Applicant is hereby suspended pending disposal of the Appeal.

(ii) The Applicant shall be released on bail on executing a PR bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Sessions Judge and upon deposit of fine, if not already deposited.

(iii) Criminal Application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)

(NITIN JAMDAR, J.)