

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

**INTERIM APPLICATION NO.1173 OF 2019
IN
CRIMINAL APPEAL NO.1400 OF 2019**

Dilawar Hasan Parande
Age 25 Yrs. Occ : Labour,
R/at Manoli, Taluka Shahuwadi,
District : Kolhapur

... Applicant

Versus

1. The State of Maharashtra
2. Smt. Banubai Rais Rayane

... Respondents

.....

Mr. Tejas Hilage, Advocate for the Applicant.
Mrs. A. A. Takalkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th JANUARY, 2021.

PER COURT:

1. This is an application for suspension of sentence of imprisonment imposed vide Judgment and order dated 29th August, 2019 passed by learned Sessions Judge, Kolhapur in Sessions Case No.25 of 2011 whereby the applicant was convicted for the offence punishable under Section 304-B of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for Ten years.

He is further convicted for the offence under Section 498-A of IPC and sentenced to suffer simple imprisonment for a period of Three

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years and to pay fine of Rs.25,000/-.

2. Notice issued to respondent has been served. Report submitted by concerned Police Station is on record.

3. Learned advocate for the applicant submitted that the applicant was on bail during trial and he has not misused the facility of bail. On conviction, the applicant has been taken in custody and since 29th August, 2019 the applicant has been undergoing the sentence of imprisonment. It is submitted that there is no evidence to establish the charge under Sections 498-A and 304-B of IPC. The statement of victim was recorded by Juna Rajwada Police Station on 8th November, 2010, wherein she had stated that, she had sustained burn injuries accidentally while she was cooking on the stove. She does not suspect anybody and she has no complaint against anyone. The said statement was forwarded by the said Police Station to the Police Station which investigated the present crime. The applicant had tried to extinguish the fire and that he had also sustained the injuries. It is submitted that PW-8 has admitted that, the statement of the victim was recorded at C.P.R. Hospital and the said information was submitted to Shahuwadi Police Station on 15th November, 2010. It is submitted that, PW-4 has admitted that there was burn injuries on the body of accused No.1 The version of PW-1 and PW-6 is after

thought. The complaint was lodged belatedly.

4. Learned APP submitted that, the incident had occurred within short span of time after the marriage. The evidence of mother of victim (PW-1) and maternal uncle of the victim (PW-6) clearly spells out the harassment caused to the victim. There was demand of money and the amount was paid to the accused. The prosecution has proved the charges against the applicant.

5. The marriage between the deceased and the applicant was performed on 30th March, 2007. The incident in question had occurred on 8th November, 2010. The applicant (accused No.1) and accused Nos.2 & 3 (brother and mother of applicant) were acquitted. All of them were charged for commission of offences under Sections 302, 304-B, 498-A, 323 r/w Section 34 of IPC. All the accused were acquitted for the offences under Sections 302 and 323 of IPC. Apparently, statement of the deceased was recorded on 8th November, 2010. In the said statement it was stated that, the incident had occurred accidentally and she has no complaint against anyone. The said statement was recorded by Juna Rajwada Police Station. It was forwarded to Shahuwadi Police Station vide covering letter dated 9th November, 2010. PW-8 Dattatray Ghogre, who conducted investigation has deposed that, the papers in ADR included

statement of accused, information of accident, inquest panchanama, memo of post-mortem examination and cause of death certificate. The deceased had suffered burn injuries on 8th November, 2010 and the medical certificate was included in the papers. In the cross examination he stated that on 8th November, 2010, the deceased had given information to the police at CPR Hospital and the said information was submitted to Shahuwadi Police Station on 15th November, 2010. As per contents of the information, it was accidental burns. PW-8 admitted that there was no investigation about this information. From the evidence of PW-4 Ashok Kamble it can be seen that, according to him, there was burn injuries on the body of accused No.1 (applicant) which supports submission of the applicant that he had tried to extinguish the fire on the person of deceased. The First Information Report was lodged on 16th November, 2010 after the death of the victim. The incident had occurred on 8th November, 2010. The FIR was lodged by the mother of the deceased after the death of the victim which had occurred on 15th November, 2010. It is not reported that the applicant had misused the facility of bail granted to him during trial. Considering these circumstances, case for suspension of imprisonment and grant of bail is made out. Hence I pass the following order :

ORDER

i) Interim Application No.1173 of 2019 is allowed.

ii) Pending hearing and final disposal of Criminal Appeal No.1400 of 2019, the sentence of imprisonment imposed by the learned Sessions Judge, Kolhapur vide Judgment and order dated 29th August, 2019 passed in Sessions Case No.25 of 2011 is suspended and the applicant is directed to be released on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

iii) The applicant shall report the trial Court once in three months.

iv) Application stands disposed of accordingly.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)