

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APPA) No.214/2021 in Criminal Appeal
No.146/2021

(Vinod Arsod V State of Maharashtra)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Samir S. Das, Adv (appointed) for applicant/appellant.
Mr. T.A. Mirza, APP for State.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 30-11-2021.

By way of this application under Section 389 of the Code of Criminal Procedure, 1973, the applicant/appellant is seeking suspension of his substantive sentence of imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code (IPC).

2. We have heard learned Counsel Mr. Samir S. Das, appearing for the applicant/appellant and Mr. Mirza, learned APP appearing for the State. We have perused the impugned judgment and order so also the copies of depositions of the witnesses with the assistance of learned Counsel for both the sides.

3. At the outset, we found substance in the contention of learned Counsel Mr. Samir S. Das that the learned Sessions Judge has prima facie committed an error in not giving an opportunity of

cross examining the prosecution witnesses on the charge of murder which was added against the applicant/appellant after recording of evidence of all the prosecution witnesses.

4. It is worthwhile to mention here, that initially the learned Sessions Judge framed charge against the appellant for the offences punishable under Sections 498A, 306 and 304B of the IPC below Exhibit-5 on 27-03-2019. Thereafter, the learned Sessions Judge recorded the evidence of all the prosecution witnesses i.e seven prosecution witnesses and then framed additional charge below Exhibit-63 for the offence punishable under Section 302 of the IPC on 29-01-2020. Ultimately, the learned Sessions Judge recorded the conviction against the appellant for the offence punishable under Section 302 of the IPC.

5. The learned APP could not point out that the learned Sessions Judge had given an opportunity to the accused to cross examine the prosecution witnesses on the charge of murder. This ground in our opinion is sufficient, at this stage, to suspend the substantive sentence of imprisonment of the applicant/appellant on the following terms and conditions :-

- (i) The applicant/appellant-Vinod Gulabrao Arsod shall be released on bail pending decision of the appeal on execution of Personal Bond of Rs.50,000/-

(Rs. Fifty Thousand only) and one surety in the like amount.

- (ii) The applicant/appellant shall make available himself at the time of final hearing of the present appeal.

6. Fees of the learned appointed Counsel shall be quantified at Rs. 2000/-.

7. Application stands disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

Digitally signed by
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