

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

**946 CRIMINAL APPLICATION NO.164 OF 2022
IN
APEAL/33/2022**

**ARVIND GOVINDRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant: Mr. R. N. Dhorde, Senior
Advocate a/w. Mr. Dhorde Vikram R
APP for Respondent: Mr. K. S. Patil

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**CORAM: SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE: 13th JULY, 2022

PER COURT:

1. This is an application for bail pending appeal. The Applicant was arrested on 18.06.2019 and since then he is in custody. The Applicant was convicted of murder of his wife on 12.11.2021. The Applicant was sentenced to suffer imprisonment for life as major punishment besides other smaller punishment for other offence.

2. The prosecution case is that the Applicant's wife was suffering from ill health for a long period and, therefore, the Applicant got

fed up of her illness and on the date of incident when no one was in the house he murdered his wife firstly by strangulating her with a rope and then by pouring kerosene on her and setting her on fire. On this basis, he faced the trial. During trial the prosecution examined 10 witnesses out of which evidence of daughter-in-law PW-2 is important. Nobody from the village is examined as witnesses. The prosecution has examined Panchas for Spot Panchanama, Inquest Panchanama as well as for Recovery Panchanama. The other part of evidence consisted of the evidence of the Police Officers and of the Medical Officer.

3. We have heard learned Counsel for the parties.

4. Learned Senior Counsel for the Applicant submitted that there is only one circumstance held against the Applicant by the trial Court and that is his possible presence in the house when the incident had taken place. On this sole basis the conviction is recorded. He submitted that

circumstance is not true and cannot form the basis of conviction.

5. Learned APP opposed this Application. He submitted that, though the Applicant had given a Report on the next date regarding accidental death of his wife; in that case, knowingly, he had misled the Police by mentioning that the deceased had died because her saree had caught fire when she was making tea on gas. There was no reference of burning by kerosene. He submitted that recovery of rope and kerosene can was at his instance. All these circumstances show that only he could have committed this offence.

6. We have considered the submissions and we have perused the evidence.

7. There is nothing to show that the Applicant was present in the house at the time of incident. The incident had taken place between the 04:30 to 04:45 PM in the late afternoon. These are not odd hours. More importantly, the evidence of

PW-2 the daughter-in-law shows that she and her husband had gone out of the village to visit their relatives in the morning but she had categorically stated that the deceased, Applicant as well as PW-2's son had not left the village. Apart from the Applicant the grandson of the Applicant was also in the village. The prosecution has not shown the needle of suspicion towards him. Only the Applicant is named as accused and is ultimately convicted. The prosecution needed to rule out every other hypothesis that someone else could have committed this offence. The prosecution has not examined any witnesses to show that the Applicant was in the house at the relevant time or that he was seen in the company of his wife shortly before the incident.

8. The Police Officers have visited the scene of incident after taking a station diary entry and the inquest panchanama was conducted at around 07:00 O'clock and the Spot Panchanama was conducted at around 09:00 O'clock. In the Inquest Panchanama it was mentioned that there was burnt

cloth in the mouth of the deceased indicating that the deceased was gagged. This was a suspicious circumstance and the Police Officer should have immediately lodged the F.I.R. about her suspicious death. But that was not done. Instead, on the next day, the applicant lodged the A.D. Report which ultimately was used against him.

9. The other circumstance of the recovery of rope and kerosene can is also innocuous. As far as this case is concerned, Spot Panchanama was conducted on the night of the incident and at that time neither rope nor kerosene can was seized. Therefore, subsequent recovery at the instance of the Applicant becomes doubtful. Apart from that there is no other circumstance which could be said to be an incriminating circumstance against the Applicant. Therefore, sufficient doubt is raised about his involvement. Besides this consideration, the Applicant today is around 76 years of age. The Appeal is not likely to reach its final hearing in near future. In this view of the matter, we are

inclined to grant bail during pendency of this appeal.

10. Hence the following order-

ORDER

. During pendency and final disposal of the appeal, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount.

11. The Criminal Application is disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]

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