

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

907 CRIMINAL APPLICATION NO.1649 OF 2022
IN
CRIMINAL APPEAL NO.365 OF 2022

NETAJI GYANOBA GODE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. More P. P.
APP for Respondent : Mr. K S Patil

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CORAM: SARANG V. KOTWAL & BHARAT P. DESHPANDE, JJ.
Dated : July 15, 2022

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PER COURT :-

1. This is an application for bail pending appeal. The applicant is convicted for the offence punishable under section 302 of the IPC and is sentenced to suffer imprisonment for life and to pay fine of Rs.15,000/-.

2. The case of the prosecution is that, on 1.8.2020 the applicant committed murder of his wife Ashabai by stabbing. The applicant was arrested and investigation was carried out. The applicant faced the trial vide Sessions Case No.7 of 2021, which resulted in his conviction and sentence passed by the Additional Sessions Judge-2, Udgir on 24.3.2022. During trial

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from the date of his arrest in August 2020, the applicant was in custody.

3. We have heard Mr. More, learned counsel for the applicant and Mr. Patil, learned APP for respondent.

4. Learned counsel for the applicant submitted that, the conviction is based only on the deposition of sole eye witness PW-1 Dnyanoba Hande. He was a relative of the deceased and he was under obligation of the father of the deceased. He is a chance witness and he was not residing in the area from where he had allegedly seen the incident. He submitted that, PW 1 had seen two stab wounds on abdomen and two blows given on the back of the deceased by the Applicant. According to the learned counsel for the applicant, postmortem notes show that there are six stab wound. Therefore, his case is doubtful.

5. Learned APP opposed this application. He submitted that deposition of eye witness sufficiently inspires confidence and there is no reason to grant him

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bail at this stage. The evidence can be analyzed at the final hearing.

6. We have considered these submissions. PW 1's evidence is clear enough. He had seen the deceased and the applicant going towards a temple from a road where he was sitting. Thereafter, immediately he heard the shouts of Ashabai. Therefore, he rushed there and then he saw the incident. In this situation, it is quite obvious that he had rushed to the spot when the incident had already started. By that time, the applicant had already inflicted at least one blow on the deceased. Medical evidence shows that there were six blows. In fact, medical evidence shows that there were 5 stab wounds and one fracture. So there is no force in the submission of the learned counsel for the applicant about discrepancy in the number of blows mentioned by the eye witness and number of blows which are reflected in the medical evidence.

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7. Apart from that, learned counsel heavily relied on a stray admission mentioned in the cross-examination that when he reached the spot he had seen back of the assailant, but he had not seen the face. He had seen the deceased and the applicant going on that road. Within a very short span the incident had taken place. There is proximity of time and place with the 'last seen together theory.' That theory is not challenged in the cross-examination.

8. Apart from that, when he reached the spot, he called the applicant by referring to his name. Therefore, identity of the applicant is also established through this witness. PW 1 has stated that, he had called PW-3 Maruti on telephone. PW-3 Maruti is examined. He has stated that he had gone to the spot though he does not refer to PW-1. The fact remained that PW-3 had come on the spot and had taken the deceased to doctor where she was declared dead. Thus, at this stage, there is sufficient material against the applicant. Therefore, we

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are not inclined to grant bail to the applicant. Hence,
following order.

O R D E R

Application is rejected.

(BHARAT P. DESHPANDE, J.) (SARANG V. KOTWAL, J.)

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