

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 1678 OF 2022 IN
CRIMINAL APPEAL NO. 372 OF 2022

Surendra s/o Bharatsingh Chavan & others

Applicants

Versus

The State of Maharashtra

Respondent

Mr. A. B. Girase, Advocate for the applicants.

Mr. A. M. Phule, APP for the State.

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

DATE : 13th OCTOBER, 2022.

PER COURT :

1. By this application filed under Section 389 of the Code of Criminal Procedure, applicants are seeking suspension of substantive sentence imposed in Sessions Case No. 3/2009 by judgment and order dated 26th April, 2022 passed by learned Additional Sessions Judge -1, Udgir, Dist. Latur.

2. Applicants were charged for offence punishable under Sections 302, 304-B, 498A, 323, 504 read with Section 34 of the Indian Penal Code. Applicants along with co-accused were prosecuted for the above offences for allegation that on the fateful day, by pouring kerosene on the person of the deceased, she was set

ablaze. It is also alleged that deceased was subjected to mental and physical cruelty for demand of dowry. On conclusion of trial, present applicants came to be convicted for the offences punishable under Sections 302, 304-B and 498A read with Section 34 of the Indian Penal Code and sentenced to suffer life imprisonment for the offence punishable under Section 302 of the Indian Penal Code.

3. Learned advocate for the applicants submitted that during the course of trial, applicants were on bail and applicants No. 2 and 3 are female. He drew attention of this Court to the impugned judgment as well as material evidence on record. According to him, there are multiple inconsistent dying declarations, oral as well as written, which make the case of prosecution not reliable. It is submitted that learned trial Court after discarding other dying declarations placed reliance on dying declaration Exhibit 114 which is without mentioning time as well as endorsement of the Medical Officer about fitness of the victim to make statement. Thus, according to him, applicants have good chance of success in appeal.

4. Learned APP opposed the application and submitted that learned trial Court after considering the material evidence on record

has convicted present applicants and having regard to the serious nature of offence they are not entitled for bail on suspension of sentence.

5. *Prima facie* consideration of material on record shows that deceased had sustained 98% of burns. She claimed to have made oral dying declarations to her mother, brother, Chayadevi, Ramakant, Brijmohan and Vinod. All the dying declarations are inconsistent and have been discarded by learned trial Court. Learned trial Court placed reliance on dying declaration Exhibit 114. However, *prima facie*, perusal of said dying declaration shows that there is no endorsement of Medical Officer showing recording of the said dying declaration in the presence of Medical Officer and examination of the maker of the statement before and after completion of the statement. Even endorsement made on police memo (Exhibit 113) also does not state that patient is conscious and oriented. It only states that patient is in condition to make statement. All these aspects of the case require consideration at the time of hearing of appeal.

6. Applicants No. 2 and 3 are female. One of the dying declarations completely exonerate applicant No. 1. All applicants

were on bail during trial. There is no chance of appeal being taken for hearing in near future. In such circumstances, a case is made out by applicants for suspension of sentence and for enlargement on bail. Hence the order :-

ORDER

(i) Criminal application is allowed in terms of prayer clause 'B'.

(ii) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicants be released on bail on their execution of P.R. Bond in the sum of Rs. 15,000/- each (Rs. Fifteen Thousand only) with one surety each in the like amount.

(iii) Bail before the trial Court.

(R. M. JOSHI)
Judge

dyb

(R. G. AVACHAT)
Judge