

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2225 OF 2022

IN

CRIMINAL APPEAL NO. 623 OF 2022

Sahil @ Guddu Afsar Shaikh

...Applicant

**Versus**

The State of Maharashtra

...Respondent

...

Mr. Satej S. Jadhav, Advocate for the Applicant/Appellant.

Mr. R.V. Dasalkar, APP for Respondent-State.

...

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

**DATE : NOVEMBER 22, 2022.**

**ORDER (PER R.M. JOSHI, J)**

1. Applicant/convicted accused by this Application is seeking suspension of substantive sentence of life imprisonment recorded against him by the judgment dated 16<sup>th</sup> April, 2022 passed in Sessions Case no. 132 of 2018 for the offences punishable under Sections 302 and 201 of Indian Penal Code, 1860, during pendency of appeal.

2. Learned Advocate for the Applicant submitted that there is no evidence in order to show that it was the Applicant who has committed murder of the deceased. According to him, evidence of Suhana – PW 6 at the most indicates that there was relationship between her and deceased and her evidence to the effect she having seen accused taking bath at 02.00 am on 10.10.2015, is not conclusive proof that offence in question being committed by the accused. It is submitted that last seen theory does not

assume importance as accused and deceased were friends with no dispute or quarrel between them. It is, therefore, submitted that Applicant has bright chances of success in the present Appeal and hence, during the pendency of Appeal he may be enlarged on bail.

3. Learned APP opposed contentions by submitting that there is evidence of accused being seen in the company of deceased and thereafter deceased was not seen alive by anyone else. It is submitted that affair between the wife of accused and deceased was sufficient motive for accused to kill deceased. According to him, learned trial Court after considering evidence on record has rightly concluded about proof of guilt of the accused and hence, it is not a fit case where substantive sentence can be suspended.

4. *Prima facie* perusal of material on record shows that on 10.10.2015 deceased, who is a cleaner on a truck, came to the village and met accused at his pan shop at 02.30 pm and was also found there at 08.00 pm. This indicates that deceased was frequent visitor to shop of accused and his presence there was not unusual. Suhana – PW 6, wife of the accused, though admitted her affair with the deceased and also deposed about she having seen accused taking bath at 02.00 am., this evidence does not take case of prosecution further beyond creating suspicion against accused. It is admitted by witnesses that accused and deceased were friends with no incident of quarrel having occurred between them. At this stage, there

appears substance in the contention of the learned Advocate for the Applicant that at the most evidence on record would indicate strong suspicion against accused which cannot take place of proof.

5. Considering the pendency of the Appeals, this Appeal is not likely to see day of light in near future and hence, on the basis of *prima facie* appreciation of evidence on record, this Court finds it fit to suspend sentence pending appeal. We are, therefore, inclined to allow the application as under:-

#### **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 applicant be released on bail on his executing P.R. bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
- (iii) Bail before the trial Court.

**(R.M. JOSHI, J.)**

**(R.G. AVACHAT, J.)**

Malani