

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

**CRIMINAL APPLICATION NO.2743 OF 2022
IN
CRIMINAL APPEAL NO.605 OF 2022**

Gopal S/o Ranglal Rathod,
Age-39 years, Occu:Agriculture,
R/o-Kumbhari Khurd Tanda,
Tq-Jamner, Dist-Jalgaon

...APPLICANT

VERSUS

The State of Maharashtra,
Through Pahur Police Station,
Pahur, Tq-Jamner,
Dist-Jalgaon.

...RESPONDENTS

...
Mr.A.M. Gholap Advocate for Applicant.
Mr.S.D. Ghayal, A.P.P. for Respondent-State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE OF RESERVING ORDER : 30th SEPTEMBER 2022

DATE OF PRONOUNCING ORDER : 21st OCTOBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for suspension of sentence. Applicant is original accused No.1. Present applicant

has been sentenced, after holding him guilty, in Sessions Case No.68 of 2015 by the learned Sessions Judge, Jalgaon on 25th July 2022, thus:

“ (1) Accused No.1 Gopal Ranglal Rathod is convicted for the offence punishable under Sections 201 and 302 of the Indian Penal Code.

(2) Accused No.1 is sentenced to suffer rigorous imprisonment for life for the offence punishable under section 302 of the Indian Penal Code and to pay fine of Rs.2,000/- (Rupees Two Thousand only) and in default of payment of fine, to undergo rigorous imprisonment for three months.

(3) Accused No.1 is sentenced to suffer rigorous imprisonment for 3 years for the offence punishable under section 201 of the Indian Penal Code and to pay fine of Rs.1,000/- (Rupees One Thousand only) and in default of payment of fine, to undergo rigorous imprisonment for one month.

(4) Both the above substantive sentences to run concurrently.”

2. Heard Mr. Gholap, learned Advocate for the applicant and Mr. Ghayal, learned APP for the respondent – State.

3. It appears from the impugned Judgment as well as the documents produced on record in the form of paper-book that present applicant / accused No.1 himself had lodged report against one Mithun Nandlal Rathod with Police Station, Pahur which was under Section 302, 376-A(2)(f)(I) of the Indian Penal Code. However, it appeared to the Investigating Officer that the said story is false or not true. Involvement of said Mithun Rathod was not found and therefore, his name came to be deleted and only offence under Section 302 of the Indian Penal Code was taken up for investigation. Further, it appears that other Sections came to be added, especially Section 498-A, 323, 201, 504, 506 read with Section 34 of the Indian Penal Code.

4. From the medical evidence and the post-mortem report, it can be seen that the death was homicidal in nature. The fact disputed appears to be, as to who was the author of the crime. Here it is to be noted that the father and mother of the present applicant were accused Nos.2 and 3 and the trial Court has acquitted them from all the offences, whereas the present applicant has also been acquitted of the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code. The conviction appears to be based on the circumstantial evidence, which is held to be proved and also that

the death was in the hut in the field belonging to the accused and therefore accused No.1 being custodian of wife, it appears that he has been held guilty. The sequence of happenings has been taken note of, yet there was basically a theory that was put by the present applicant in the form of the First Information Report and even some part of the investigation was made against said Mithun Rathod. Thereafter said Mithun Rathod has been posed as witness i.e. PW-5. All these facts are definitely required to be considered.

5. The Appeal is admitted and it will take time to be heard and disposed of. Another fact is that accused No.1 – present applicant was on bail throughout the trial and it is not shown that he has committed any breach of the conditions those have been imposed and therefore, till the conclusion of the Appeal, the sentence needs to be suspended and the applicant deserves to be released on bail. Hence following order:

ORDER

(I) Application stands allowed.

(II) The substantive sentence imposed on the applicant in Sessions Case No.68 of 2015 by the learned Sessions Judge,

Jalgaon on 25th July 2022 stands suspended till the final hearing and disposal of Criminal Appeal No.605 of 2022.

(III) The applicant – Gopal S/o Ranglal Rathod be released on bail on P.R. of Rs.50,000/- (Rupees Fifth Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

(IV) The applicant shall not commit any criminal activity.

(V) The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the Appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

(VI) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(VII) Bail before the Trial Court.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE