

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

**CRIMINAL APPLICATION NO.2379 OF 2021
IN
CRIMINAL APPEAL NO.499 OF 2021**

Daivashala w/o Umakant Waghmare,
Age-52 years, Occu:Labour,
R/o-Vijay Colony, Samarth Nagar,
Taluka and District-Latur.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Nilesh S. Ghanekar Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent-State.
...

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

DATE OF RESERVING ORDER : 29th AUGUST 2022

DATE OF PRONOUNCING ORDER : 30th SEPTEMBER 2022

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

1. Present Application has been filed for suspension of substantive sentence imposed on the applicant – original accused No.1 in Sessions Case No.121 of 2014 for the offence

punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code by the learned Sessions Judge, Latur on 19th August 2019. The applicant has been convicted and sentenced thus:

“(I) Accused No.1 Daivashala w/o Umakant Waghmare, Age-45 years, Occu-Labour, R/o Vijay Colony, Samarth Nagar, Latur, Tq. & Dist-Latur is convicted as per Section 235(2) of Code of Criminal Procedure for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 and is sentenced to suffer Life Imprisonment and to pay fine of Rs.10,000/- (Rupees Ten Thousand only).

(II) Accused No.1 Daivashala w/o Umakant Waghmare is also convicted as per Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code, 1860 and is sentenced to suffer Rigorous Imprisonment for (07) seven years and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to suffer Rigorous Imprisonment for (01) one month.

(III) Both the sentences shall run concurrently. ”

2. Heard Mr. Ghanekar, learned Advocate appearing for the applicant and Mr. Virdhe, learned APP appearing for the respondent – State. Perused the paper-book.

3. At this stage, it is required to be seen as to whether pending the Appeal, which is admitted, applicant – original accused No.1 can be released on bail or not. It will not be out of place to mention here that Application has also been objected by the original informant. Deceased is the wife of original informant. Perusal of the evidence recorded by the learned Sessions Judge would show that PW-1 / informant is the person who has stated that his wife got acquaintance with accused No.1 and then there was financial transaction due to the friendship of the deceased with the applicant. It was then stated that the said amount was given by the deceased to the applicant as it was promised to the deceased by the applicant that she would give double the amount within 1 ½ months. Later on when the deceased started demanding her amount from applicant, then it is stated that deceased was taken by applicant in a Car to Solapur on 22nd July 2014. Informant states that he had dropped his wife at about 11.00 to 11.30 a.m. near Ashta-Vinayak Mandir, Shivaji Nagar, Latur and deceased told him that she would return by night. As his wife did not return, the informant says that he has sent his brother-in-law to the house of the applicant around 9.30 a.m. on 23rd July 2014. Brother-in-law informed the informant that house of the applicant is locked. Then informant was searching

his wife for whole day and made phone calls to his relatives. Again he had sent his brother-in-law to the house of the applicant on 24th July 2014. At that time applicant was in her house but told that deceased had not come to her house and then the missing complaint was lodged. Thus, it appears that the testimony of the informant would show about the transaction and at the most the motive, but his testimony is not on the point of last seen together.

4. There is testimony of PW-3 Chandrashekhar Kshirsagar who has stated that he had seen the deceased as well as the applicant in a Car on 22nd July 2014. Then the evidence against the applicant is in the form of testimony of PW-11 Vijaykumar Tamke on the point of recovery panchnama. The recovery is of the amount of Rs.4,00,000/- from the house of the applicant.

5. The postmortem report shows the cause of death as "due to throttling" and it appears that the dead body was found on Dhule-Solapur highway, near petrol pump of Indapur village.

6. Thus, it appears that the case was resting on the circumstantial evidence. It is required to be seen as to whether the said chain of circumstance was established beyond

reasonable doubt. It appears that the applicant was never released on bail throughout the trial and she is in jail since 30th July 2014. There is also evidence in the nature of phone calls, tower location etc. and the nodal officers of the Mobile companies have been examined. Accused No.2 – Parmeshwar Jadhav is stated to be with the present applicant and the deceased and there is discovery at the behest of accused No.2 of the ornaments on the person of the deceased. Therefore, taking into consideration the evidence, though the case rests on circumstantial evidence, this is not a fit case where the applicant should be released on bail pending the Appeal.

7. The Application stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE