

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.2412 OF 2022
IN
CRIMINAL APPEAL NO.732 OF 2022**

Chandrakant Sopan Bharate Applicant
Versus
The State of Maharashtra Respondent

Mr. Nagesh Y. Chavan, Advocate for the Applicant.
Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM :SARANG V. KOTWAL, J.
DATE : 25th JULY, 2022

P.C. :

1. This is an application for suspension of sentence pending hearing and final disposal of this appeal.

2. The applicant had faced the trial along with his mother for commission of offence punishable under Sections 498-A, 306, 304-B read with 34 of the Indian Penal Code. At the conclusion of the trial, the applicant was acquitted of the charges of commission of offence punishable under Sections 306 and 304-B read with 34 of IPC. He was convicted only under Section 498-A read with 34 of IPC and was sentenced

to suffer R.I. for two years with fine of Rs.2,000/- and in default of payment of fine to suffer S.I. for one month.

3. Heard Shri Nagesh Chavan, learned counsel for the applicant and Smt J.S. Lohokare, learned APP for the State.

4. Learned counsel for the applicant states that the applicant has paid the fine amount. Learned counsel submitted that out of two years of substantive sentence, the applicant has already undergone nine months as an under-trial prisoner and only a small portion of his sentence remains. He submitted that the learned Judge has acquitted the applicant from the charges of commission of offence punishable under Section 306 of IPC and that would indicate that there was no cruelty meted out to the deceased wife of the applicant. Therefore, the applicant has a good case on merits.

5. Learned APP submitted that the incident took place within three years of marriage and, therefore, presumption under Section 113A of the Evidence Act

applies. However, till today no appeal against acquittal is preferred by the State. Therefore, as the matter stands, there is only conviction under Section 498-A of IPC.

6. I have considered these submissions. As far as offence under Section 304-B is concerned, the learned Judge has observed that the presumption under Section 113B of the Evidence Act cannot be invoked and he has given reasons for the same. Learned Judge has observed that there was time gap between the alleged last demand and death and, therefore, the presumption under Section 113B was not drawn.

7. At the same time, learned Judge in paragraph-35 of the order has discussed the reasons for conviction under Section 498-A of IPC and to that extent he has accepted the prosecution case.

8. All these issues will have to be considered at the final hearing stage. However, the applicant is sentenced only for two years and has already suffered nine months of actual imprisonment. The appeal is not likely to be listed for final

hearing within a reasonable time. Therefore, the applicant deserves to be released on bail during pendency and final disposal of this appeal. Hence, the following order :

:: O R D E R ::

- i. During hearing and final disposal of Criminal Appeal No.732/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- ii. Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)