

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

INTERIM APPLICATION NO. 927 OF 2020

IN

CRIMINAL APPEAL NO. 295 OF 2020

Harichandra @ Hari Motiram Pawar

...Applicant

Versus

The State Of Maharashtra

...Respondent

...

Mr.Nitin Sejpai for Applicant/Appellant.

Ms. Veera Shinde, APP for Respondent/state.

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**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : 21st MARCH, 2022.

P.C.:

1. By this Application, the Applicant is seeking relief of releasing him on bail during the pendency and final disposal of the Criminal Appeal No.295 of 2020.

2. Heard Mr. Nitin Sejpai, the learned counsel appearing for the applicant and Ms. Veera Shinde, the learned APP for State.

3. The applicant, who was the original accused No.2 in Sessions Case No. 29 of 2014 on the file of Additional Sessions Judge-3, Nashik, was convicted by Judgment and Order dated 06.02.2020 for the offence punishable under Sections 302 of the Indian Penal Code and was sentenced

to suffer Life Imprisonment and to pay a fine of Rs. 10,000/- (Rs. Ten Thousand Only), in default to suffer Rigorous Imprisonment for two years. The applicant was also convicted for the offence punishable under Sections 120(B)(1) of the Indian Penal Code and was sentenced to suffer Life imprisonment and to pay a fine of Rs. 10,000/- (Rs. Ten Thousand Only), in default to suffer Rigorous imprisonment for Two years. All the Sentences were directed to run concurrently.

4. Apart from the applicant, there was another accused No.1 Rajendra Shankar Raut, who was convicted and sentenced to suffer life imprisonment for the offences punishable under Sections 302 and 120(B) (1) of the IPC. In addition, the accused No.1 was also convicted for the offence under section 498-A of the IPC and sentenced to suffer Simple Imprisonment for the period of Three years and to pay a fine of Rs. 5,000/- (Rs. Five Thousand Only), in default to suffer Simple Imprisonment for Six Months.

5. The prosecution case is that, the deceased Priyanka was married to accused No.1-Rajendra Raut on 29.05.2013. After couple of days of marriage, the accused No.1 started suspecting her character and started beating her and subjected her to mental and physical cruelty. He had also threatened to kill her.

6. On 22.10.2013, the accused No.1 Rajendra and Priyanka (deceased) had gone to Nashik for Diwali Shopping. At around 8.30 pm the deceased informed her mother that, they were going back to their home at Surgana. At around 1.30 in the midnight the accused No.1's brother Atul informed mother of the deceased that Rajendra and Priyanka were assaulted by unknown persons near Chirai Ghat on their way home. The police also informed the mother of deceased that her daughter Priyanka died due to stab injuries and her husband also sustained minor injuries.

7. It is further the case of the prosecution that, according to the medical officer the cause of death was due to stab injuries. Deceased Priyanka had suffered as many of 6 injuries. Accused No.1 had suffered only simple superficial injury. Priyanka had suffered CLW over left ear lobe, CLW over right ear lobe; abrasion over right side of chin, five incised injury over abdomen, and contusion over left upper chest. She died because of these injuries. According to the prosecution the death of Priyanka was homicidal. It is argued that the accused No.1 with the help of present applicant planned to commit the murder of his wife Priyanka and to inflict superficial injuries on his own person so as to make it appear as a case of robbery. Accordingly he executed this plan.

8. Heard the learned counsel appearing for the applicant. He submits that there is absolutely no evidence against the Applicant. There

was no motive for the Applicant to commit murder of the deceased. Only evidence against him is of recovery of knife and ornaments at his instance. However, that recovery itself is suspicious, because, on the same day i.e. on 25/10/2013, the accused no.1 had also shown his willingness to take out of those articles. They were not found from the place shown by Accused No.1. Immediately on the same day, the applicant's statement was recorded leading to recovery of those articles. He submits that the ornaments were not identified by any relative of the deceased. Therefore, it cannot be said that the present Applicant is connected with the crime. Mr. Sejpal submits that during investigation the applicant was in custody for about one and half year and after conviction in February 2020, he is in custody for about three and half years.

9. Learned APP vehemently opposed this application on the ground that there was recovery of knife which was stained with blood having blood group of the deceased as also there was recovery of ornaments at the instance of the applicant. She submitted that there is sufficient evidence against the Applicant, and therefore, this application may be rejected.

10. We have considered the submissions as well as the evidence on record. The only evidence against the present applicant is about the recovery of the gold ornaments and the knife. The ornaments are not

identified by anybody as those belonging to the deceased. In so far as recovery of knife and ornaments is concerned, on the very same day i.e. on 25.10.2013 the accused No.1 showed his willingness to show the place where he along with applicant had thrown the knife and ornaments. Mr. Sejpal has tendered across the bar the copies of Panchnamas recorded on 25/10/2013. The same are taken on record and mark 'X' collectively for identification.

11. It appears that, Accused No.1 in his statement before the police had stated that he was ready and willing to show the place where, after committing murder of Priyanka, they had thrown the knife and the ornaments. Therefore, police along with panchas took him to that place, however, nothing could be found by the police from that place.

12. Thereafter, on the same day i.e. on 25/10/2013, the police recorded the statement of the present Applicant wherein he has stated that he was ready and willing to show the place where he and his friend Praksh alias Bala Damodar Bagul had concealed the knife and ornaments. It was a joint concealment. Accordingly police along with panchas took the applicant to the said place from where they found the knife and ornaments. It appears that the same persons, who acted as Panchas at the time of recording of statement of Accused No.1, had acted as the panchas on memorandum of panchanama of recovery of knife and ornaments at the

instance of Applicant. There is no evidence as regards identification of the ornaments. As per the prosecution case, the role attributed to the present Applicant is of concealing of the knife purportedly used in the crime and the ornaments on the person of the deceased. The evidence against the applicant is weak and doubtful. However, it will have to be tested at the final hearing.

13. Considering this discussion, the Applicant – Accused No.2 is entitled for bail. Hence the following order.

ORDER

- (i) Interim Application No.927 of 2020 is allowed.
- (ii) During pendency and final disposal of Criminal Appeal No. 295 of 2020, Applicant-Harichandra @ Hari Motiram Pawar is directed to be released on bail on his furnishing P. R. Bond in the sum of Rs. 30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.
- (iii) The Applicant shall not misuse the liberty granted to him.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)