

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

**INTERIM APPLICATION NO.1255 OF 2022**

IN

**CRIMINAL APPEAL NO.403 OF 2022**

SHANTABAI @ SHOBHA KALLU @ )  
KALLAPPA BAGADI )...APPELLANT

V/s.

THE STATE OF MAHARASHTRA )...RESPONDENT

Mr. Aniket Vagal a/w. Mr. Kunal Pednekar, Advocate for the Appellant.

Mrs. P.P. Shinde, APP for the Respondent - State.

**CORAM : REVATI MOHITE DERE &  
V. G. BISHT, JJ.**

DATE : 7<sup>th</sup> JUNE 2022

**P.C. :**

1     Heard learned counsel for the parties.

2 By this interim application, the applicant seeks suspension of  
his sentence and enlargement of bail, pending the hearing and  
final disposal of the aforesaid appeal.

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3 Perused the papers. The prosecution case rests on circumstantial evidence. It appears from a perusal of the impugned judgment and order that the learned Judge has primarily convicted the applicant only on the basis of the applicant being last seen in the company of the deceased on the date of the incident and on the premise that the applicant had taken up a false plea that the deceased had committed suicide, which is contrary to the medical evidence. Learned counsel for the applicant submits that there are absolutely no circumstances on record, which bring home the complicity of the applicant. He submits that the prosecution has not brought any evidence on record with respect to last seen, though the learned Judge has observed that the applicant was last seen with the deceased. He further submits that the prosecution has also failed to bring on record evidence of motive for the applicant to cause the death of the deceased. According to the learned counsel for the applicant, Section 106 of the Evidence Act will apply only to those cases where the prosecution has succeeded in establishing the facts from

which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the applicant. He submits that in the present case, the prosecution has failed to prove a single circumstance against the applicant and as such, mere failure by the applicant to offer a reasonable explanation in discharging the burden, cannot be a ground to convict the applicant. Learned counsel relied on the judgment of the Apex Court in the case of **Nagendra Sah vs. State of Bihar**<sup>1</sup>, in support of the said submission.

4 It appears that initially the applicant had informed PW5-Jayshree Shivaji Bagadi that her husband-deceased was lying in the house and subsequently, the applicant had disclosed to the police that she had assaulted her husband. The disclosure made by the applicant to the police is clearly inadmissible. *Prima facie*, after perusing the evidence, we find that there is no evidence to show, that the deceased was last seen in the company of the applicant. Admittedly, the prosecution case rests on circumstantial evidence. *Prima facie*, we find that the prosecution is primarily

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1 (2021) 10 SCC 725

relying on the defence/false explanation given by the applicant. The same will only be an additional link to the evidence adduced by the prosecution. The prosecution cannot absolve itself of its responsibility of proving its case as against the applicant.

5 Considering the evidence that has come on record, we deem it appropriate to suspend the sentence of the applicant and enlarge her on bail, pending the hearing and final disposal of her appeal, on the following terms and conditions :-

**ORDER**

- i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6 The application is allowed in the aforesaid terms and is accordingly disposed of.

7 All concerned to act on the authenticated copy of this order.

**(V. G. BISHT, J.)**

**(REVATI MOHITE DERE, J.)**