

husband. She got acquainted with the applicant/accused. They were staying together in live in relationship for a period of about 4 to 5 years. The applicant was addicted to liquor. On the day of incident, the applicant had assaulted the deceased since she had refused to go for work in the agricultural field. She consumed insecticide and committed suicide. The First Information Report (for short 'FIR') was registered. Investigation was completed and charge-sheet was filed.

4. Learned Advocate for the applicant submitted that, during the trial the applicant was granted anticipatory bail and there is no misuse of facility of bail granted to him. The prosecution has not proved the offences for which he has been convicted. There is no evidence to establish that there was any abetment to commit suicide. The dying declaration relied upon by the prosecution suffers from serious doubt. Assuming the contents of the dying declaration to be true, it would not constitute the offence under Section 306 of IPC. The version of the deceased reflected in the dying declaration is contradictory to the evidence of the witnesses. The recording of dying declaration is under shadow of doubt, since the evidence on record indicate that she was not in a position to make any statement. The version of other witnesses

indicate that the victim was unconscious after the alleged incident. There is no endorsement of the doctor on the dying declaration to indicate that she was in fit condition to make any statement. The version of other witnesses examined by the prosecution is after through. It runs counter to the dying declaration allegedly recorded during the course of investigation.

5. Learned APP submitted that there is sufficient evidence to convict the applicant for the aforesaid offence. The conduct of the applicant is required to be taken into consideration. The Court is required to consider the fact of Sections 7, 8 & 9 of the Evidence Act. The evidence discloses that the applicant had purchased the insecticide one month prior to the incident. The dying declaration of the deceased clearly indicates that the accused had assaulted her on the date of incident and she consumed the insecticide which has resulted in her death. Although the applicant had already admitted the victim in the hospital, the evidence of witnesses discloses that he had disappeared from the hospital, which shows his conduct and the guilty mind. The brother of the victim and other witnesses have referred to the harassment caused to the victim, which is sufficient to show that there was abetment to commit suicide.

6. The evidence on record discloses that the deceased and the applicant were residing in live in relationship. The deceased had differences with her husband. The dying declaration allegedly was recorded on 12th August, 2019. The contents would indicate that on 11th August, 2017 the accused was allegedly under the influence of liquor and the victim was told to go for agricultural field. She refused to go alone and hence she was assaulted by stick and fist blows. Assuming that contents of dying declaration are true, it is doubtful whether it is sufficient to be termed as abetment to commit suicide. Learned counsel for the applicant submitted that the inquest panchanama does not refer to any injuries on the person of the deceased. There are contradictions in the evidence of witnesses about the reason for committing suicide by the victim. The applicant was on bail during the trial. There is no adverse report about the misuse of facility of bail. Considering these circumstances, case for suspension of sentence and grant of bail is made out.

7. Hence, I pass the following order:

ORDER

- i. Interim Application No. 1346 of 2022 is allowed;

- ii.** During the pendency of Criminal Appeal No.430 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 30th March, 2022 passed by learned Additional Sessions Judge, Kolhapur in Sessions Case No.78 of 2018 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii.** The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety.
- iv.** The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- v.** In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.
- vi.** Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)