

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2038 OF 2022****IN****CRIMINAL APPEAL NO. 1379 OF 2019**

1. Mohan Vitthal Malge &]
2. Vitthal Yashwant Malge] ... Applicants/Appellants

V/s.

1. The State of Maharashtra &]
2. Madhuri Mohan Malge] ... Respondents

Mr.Ritesh Thobde a/w. Mr.Sagar Tambe for Applicants/Appellants.

Mr.H.J. Dedhia, A.PP for Respondent No.1-State.

Mr.Shashikant D. Chandak, Appointed Advocate for Respondent No.2.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.**

DATE : 17th August 2022.

PC. :

1. This is an application filed by original accused Nos.1 & 3 for suspension of sentence and releasing them on bail during the pendency of the appeal.

2. At the outset Mr.Thobde, learned Advocate for Applicants on instructions submitted that, Applicant No.1 (original accused No.1) is not desirous of pressing the present application on merits and seeks leave to withdraw it.

Leave granted.

Present Application qua Applicant No.1 (original accused No.1) stands disposed off as withdrawn.

3. Applicant No.2 is original accused No.3.

Mr.Thobde submitted that, original accused No.2 i.e. Smt. Padmini Vitthal Malge, wife of Applicant No.3, has been released on bail by this Court by its Order dated 16th March 2022 passed in Interim Application No.906 of 2020. That the role assigned to Applicant No.2 in the present crime is same and similar to that of Smt.Padmini Malge and therefore Applicant No.2 may be released on bail on the ground of parity.

4. Mr.Dedhia, learned A.P.P. and Mr.Chandak, Advocate appointed to represent Respondent No.2 vehemently opposed the application.

5. Perusal of evidence and in particular deposition of PW-12 Smt.Madhuri Navnath Malge indicates that, accused No.1 Mohan Malge had given an extra judicial confession to her, of mixing poisonous substance (Themete) in a cold-drink (Thums-up) and offered it to Smt.Nikita and Ms.Chakuli, a result thereof was death of said two persons. The balance of poison has been recovered at the instance of accused No.1 under Section 27 of The Evidence Act. It thus *prima-facie* appears that, accused No.1 in a predesigned manner mixed the said poison in the cold-drink and administered it to Smt.Nikita and Ms.Chakuli. The only role attributed to the Applicant

No.2 (accused No.3) is that he along with other family members used to harass Smt.Nikita for dowry and he was present in the house when accused No.1 administered the said poison to Smt.Nikita and Ms.Chakuli.

6. Perusal of Order dated 16th March 2022 indicates that, the role attributed to Smt.Padmini Malge is same and/or similar to that of Applicant No.2. Applicant No.2 is therefore entitled to be released on bail on the ground of parity.

7. Hence, the following Order :-

(i) During the pendency and final disposal of Criminal Appeal No. 1379 of 2019, Applicant No.2 Vitthal Yashwant Malge is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rs.Thirty Thousand Only) with one or two sureties in the like amount.

(ii) Present Application qua Applicant No.1 Mohan Vitthal Malge stands disposed off as withdrawn.

8. Application is partly allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]