

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

***INTERIM APPLICATION NO. 2140 OF 2022
(FOR BAIL)***

IN

CRIMINAL APPEAL NO. 44 OF 2020

Pravin Shankar Sutar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Kedar J. Patil a/w Ms. Sakshi Kadam, Mr. Jitesh Mundhwa & Ms. Gargi Joshi for the Applicant

Mrs. M. M. Deshmukh, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 19th JULY 2022

P.C. :

1 Heard learned counsel for the parties.

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

3 The applicant, vide judgment and order dated 19th November 2019 passed by learned Additional Sessions Judge-1, Sangli, in Sessions Case No. 210/2014, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer simple imprisonment for 6 months;

- for the offence punishable under Section 498-A of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay fine of Rs.3,000/-, in default of payment of fine, to suffer simple imprisonment for 3 months;

- for the offence punishable under Section 201 r/w 511 of the Indian Penal Code, to suffer rigorous imprisonment for 3

years and to pay fine of Rs.3,000/-, in default of payment of fine, to suffer simple imprisonment for 3 months;

All the aforesaid sentences were directed to run concurrently.

4 Co-accused-Sunil Shankar Sutar (original accused No.2, brother of the applicant) was acquitted of all the offences.

5 Learned counsel for the applicant submits that the applicant has been convicted in the said case, only because he is the husband of the deceased. He submits that the evidence of PW 2-Arvind Shankar Sutar (brother of the deceased) shows that initially no complaint was lodged as against the applicant and subsequently, on the next day, after the police disclosed to him that there was a possibility that his sister might have been murdered, that an FIR was lodged as against the applicant. He further submits that the motive alleged as against the applicant is also dis-believable, having regard to the fact that the family planning operation was done by the deceased after she

delivered three girl children and as such there was no question of deceased conceiving any child, post the operation. He further submits that the applicant was residing with the deceased along with applicant's parents and brother (co-accused No.2) in the house, when the dead body of the deceased was found, and as such, burden under Section 106 will not lie only as against the applicant. According to the learned counsel for the applicant, adverse inference will have to be drawn as against the prosecution for non-examination of the owner of the well, where the deceased had committed suicide. He submits that the applicant had brought the body of his wife home after the owner of the well informed him about the deceased. He further submits that throughout the trial, the applicant was pleading that his Narco Analysis Test be conducted, having regard to his innocence, however, the prosecution did not conduct the said Narco Analysis Test on the applicant, for reasons best known to them.

6 Learned A.P.P opposes the application.

7 Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears from the prosecution case that the deceased was staying with the applicant, applicant's brother and the applicant's parents at the relevant time. A perusal of the evidence of PW 2-Arvind Sutar shows that the police were present at the spot on the day of the incident i.e. on 22nd June 2013. The evidence reveals that the police inquired with the said witness i.e. PW 2-Arvind Sutar how the accused were treating his sister and pursuant thereto, registered a case of accidental death. The evidence further reveals that the police, after preparation of the spot panchnama, recorded the statement of PW 2-Arvind Sutar as well as the statement of his sister-Aruna and other witness, wherein, they disclosed that there were no complaints about ill-treatment to the deceased by the accused. The evidence further reveals that on 23rd June 2013 i.e. on the next day, the police called the said witness i.e. PW 2-Arvind Sutar and informed him that as per the doctor's report, his sister's death was suspicious and that she might have been murdered and accordingly asked him to visit

the police station. Pursuant thereto, an FIR was lodged as against the accused, including the applicant.

8 The evidence of the doctor i.e. PW 5-Dr. Sachin Gaikwad, in particular, his cross-examination, *prima-facie*, shows that he has contradicted Modi's Jurisprudence. The said witness was cross-examined at length on the Medical Jurisprudence and Toxicology by Modi, in particular, with respect to appearances that occur due to asphyxia as well as on the Parikh's Medical Jurisprudence and Toxicology, with respect to a case of dry drowning. It appears from the cross-examination that the features of the dead body would be different in case of asphyxia and dry drowning than what was found in the present case.

9 As far as cruelty is concerned, it appears that initially during the course of investigation of accidental death, the statements of witnesses including that of PW 2-Arvind Sutar were recorded, in

which, the said witness disclosed that they had no complaints with respect to ill-treatment by the accused on the deceased and it is only subsequently, that allegations of cruelty were levelled as against the applicant and his brother (co-accused), who was subsequently acquitted. The main allegation is that the applicant had three daughters and he was ill treating his wife (deceased), as he wanted a son. This appears to be contrary to the fact, that family planning operation was done by the deceased after the delivery of the third girl child.

10 These are essentially the allegations as against the applicant as noted above. The deceased was residing with the applicant, accused No.2 (applicant's brother) and the applicant's parents and as such, whether Section 106 of the Evidence Act would be applicable as against the applicant will have to be considered. The applicant is in custody since 2014. The appeal has been admitted vide order dated 20th January 2020. The same is not likely to come up for hearing in immediate near future, since the appeal is of the year 2020.

11 Considering the evidence on record, the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions :

ORDER

- i) The applicant be enlarged on bail, on executing PR 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.

12 The application is disposed of accordingly.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.