

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 189 OF 2022

IN

CRIMINAL APPEAL NO. 150 OF 2022

Gopal s/o Sheshrao Patil

vs.

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. P. Tathod, Advocate for applicant.
Mr. A. S. Fulzele, APP for sole respondent.

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES JJ.

DATE : 12/08/2022

By this application, the applicant/
appellant is seeking suspension of sentence and for
grant of bail during pendency of the appeal, which
stood Admitted on 17/03/2022.

2. Mr. Tathod, learned counsel appearing for
the applicant submitted that the present case is a case
of circumstantial evidence and there is no eye witness
to the incident. It is submitted that a perusal of the
impugned judgment and order of the Sessions Court
would show that the analysis of the evidence on
record and the chain of circumstances allegedly

proved by the prosecution is not properly appreciated and that if the material and evidence on record is perused by this Court, even prima facie it would appear that the conviction and sentencing of the applicant is not based on logical analysis of the material on record.

3. It is submitted that according to the prosecution, the motive for causing the death of the victim in the present case was that the victim was objecting to the affair between the applicant and the mother of the victim. It was submitted that the said relationship between the parties was existing for many years and there was lack of evidence to show that there were frequent quarrels on the basis of objections raised by the victim with regard to the said relationship.

4. It was further submitted that there were material omissions and contradictions in the evidence of the witnesses and this was crucial in the backdrop of the fact that the case of the prosecution was purely based on circumstantial evidence. It was submitted that the well from which the body of the victim was recovered was admittedly not having a boundary wall in its entirety. It was submitted that even the recovery of the alleged weapon of assault i.e. an Axe

was shown from an open plot of land, thereby demonstrating that the entire prosecution evidence was doubtful and not reliable. On this basis, it was submitted that since the applicant had remained behind bars for about three years, during the course of the trial and now since February, 2022, this Court may consider the present application favourably.

5. Mr. Fulzele, learned APP, appeared on behalf of respondent State, opposed the present application. He submitted that the circumstantial evidence in the present case was analyzed in the proper perspective by the Sessions Court while passing the impugned judgment and order. In paragraph 58 of the judgment, the circumstances were enumerated and it was found that the circumstances being individually proved, were pointing towards the guilt of the accused/applicant.

6. We have perused the material on record in the backdrop of the submissions made on behalf of the rival parties. The present case is admittedly a case of circumstantial evidence and there is no eye witness to the incident. We have perused the evidence of the mother of the victim, who herself has admitted to relationship with the applicant. The material also indicates that the relationship between

the mother of the victim and the applicant had continued for substantial number of years. Although it is stated that there was hot exchange of words couple of days before the incident, prima facie the evidence fell short of indicating that there was a running feud between victim and the applicant, in the context of the relationship with the mother of the victim.

7. In the cross-examination, the mother of the victim has admitted to certain omissions and the evidence of the witnesses appears to be prima facie contradictory on some of the circumstances, which have been held to have been proved by the Sessions Court.

8. In view of the above, we are of the opinion that a prima facie case is indeed made out by the applicant in his favour. It is also an admitted position that the applicant was behind bars for about three years during the course of trial and now for about six months. Accordingly the application deserves to be allowed.

9. In view of the above, the application is allowed.

10. The applicant is directed to be released on bail on furnishing P.R.Bond of Rs.25000/- [Rupees Twenty Five Thousand only] and surety in the like amount.

11. The hearing of the appeal is expedited

JUDGE

JUDGE