

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

CRIMINAL APPLICATION [APPA] NO.812 OF 2022

IN

CRIMINAL APPEAL NO.348 OF 2022

[Parokshit s/o Late Prakash Maraskolhe .vs. State of Maharashtra, through Gitti Khadan Police
Station, Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Rakhi Sarkar, Advocate for Applicant,
Ms. M.H. Deshmukh, APP for Respondent.

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**Coram : Vinay Joshi and
Mrs. Vrushali V. Joshi, JJ.**
Date : 18/10/2022.

This is an application under Section 389 of
the Code of Criminal Procedure seeking for suspension
of execution of sentence and grant of bail.

2. The applicant - Parokshit s/o late Prakash Maraskolhe along with two others was arrested in Crime No.355/2018 for the offence punishable under Section 302 r/w 34 of the Indian Penal Code. After recording the evidence, the trial court recorded finding of guilt holding all the accused guilty and accordingly sentenced them to undergo imprisonment for life along with fine. Being aggrieved and dissatisfied by this judgment and order of conviction, the appeal has been preferred.

3. The learned counsel for the appellant has criticized the reasons assigned by the trial court while recording the finding of guilt. It is submitted that the informant is not an eyewitness to the occurrence. Though the prosecution has cited two eyewitnesses, however, there is no consistency. The theory of oral dying declaration is said to be unbelievable. It is argued that there was delay in recording the statement of prosecution witness no.3. The presence of prosecution witness no.3 was doubtful on the spot. The incident took place in dark hours. It is submitted that though the prosecution witness no.6 stated about oral dying declaration, however, that was purely an omission.

4. The State resisted this application by contending that since inception complicity of accused has been stated by the witness, moreover, blood stained clothes were seized. Admittedly there is no eyewitness to occurrence besides PW-3, who was not knowing the applicant. The worth of oral dying declaration is to be tested during trial. Though deceased died after five days of the incident, his dying declaration was not recorded. The trial will take its own time for its disposal. No sharp edged weapons were used in the commission of crime. During trial, the accused was on bail. No incriminating articles were seized at the instance of the accused. Having regard to above facts,

the applicant has made out a case for suspension of sentence.

5. In view of above, execution of substantive sentence passed in Sessions Trial No.451/2018 is suspended, till disposal of appeal. In the meantime, the appellant shall be released on bail on the same terms and conditions as imposed by the trial Court during pendency of the trial. The trial court shall issue release warrant after ensuring payment of entire fine amount.

Application stands disposed of.

(Mrs. Vrushali V. Joshi, J.)

(Vinay Joshi, J.)

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