

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

CRIMINAL APPLICATION (APPA) NO. 683 OF 2021 IN
CRIMINAL APPEAL NO. 496 OF 2021

Vandana Yogesh Tekade

...Versus...

State of Maharashtra, through Police Station Officer, Police Station Walgaon, Distt. Amravati

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

Court's or Judge's orders

Ms R.P. Jog, Advocate for petitioner
Ms H.N. Jaipurkar, A.P.P. for respondent

CORAM : A. S. CHANDURKAR & SMT. M.S. JAWALKAR, JJ.

DATE : 21/03/2022

The Criminal Appeal no.496/2021 was admitted vide order dated 14/12/2021. The applicant was on interim bail.

2. The present application is filed by the applicant-accused under Section 389 of Code of Criminal Procedure for suspension of sentence and releasing her on bail during the pendency of the appeal.

3. The case of the prosecution is that the victim Smt. Nisha Jirapure was the wife of Shri Suresh Jirapure. The accused/present applicant was the neighbour of victim Nisha and she used to suspect the character of Nisha and on that ground she used to pick up quarrels with her regularly.

On 29/12/2014, at about 5.30 p.m. when Nisha was alone in her house, the appellant went there quarreled with her and poured kerosene on the person of deceased Smt. Nisha and set her ablaze with a matchstick. She then ran away. In the meanwhile, Suresh husband of the deceased rushed to the spot and tried to put off the fire. But in the process he has also sustained burn injuries. They were admitted to the Irvin hospital and after few days both of them died.

4. It is the contention of the applicant that she was convicted mainly on the basis of dying declaration. The trial was conducted vide Sessions Trial No. 69/2015 and learned Sessions Judge convicted the appellant vide judgment and order dated 28/09/2021 for having committed offence under Section 302 and 452 of the Indian Penal Code. It is the case of the prosecution that dying declaration of deceased Nisha was recorded by one Head Constable Lata Thakre. Dying declarations of deceased Nisha and of Suresh were sufficient to hold the applicant-accused guilty. However, applicant-accused contended that the said dying declaration is in the printed format and the medical certificate that the deceased was fully oriented and fit to give statement was already printed thereon. As such the said dying declaration is not beyond doubt. There was sufficient time to the Police Authorities to record dying declaration through impartial and independent witness like Special

Judicial Magistrate. However, it was not recorded which creates serious doubt or lacuna in the prosecution case. Moreover, there was no bed head ticket of the deceased Nisha. Learned Additional Sessions Judge considered the story as narrated which is highly improbable. There was no reason for the applicant-accused to suspect the character of deceased Nisha. The applicant further submitted that she has no previous criminal history. She would attend the proceedings of the appeal as and when directed. She also submits that she has a genuine reason to be released on bail, considering her medical health as she is already detected as being H.I.V. positive.

5. Learned Additional Public Prosecutor opposed the application on the ground that the charges were proved beyond reasonable doubt and she was held committed murder Nisha and the cause for death of husband of victim Nisha.

6. We have heard both the parties at length. There is *prima facie* substance in the grounds raised in the appeal. There are arguable points raised by the applicant accused as to the genuity of dying declaration and in view of the fact that the dying declaration at Exhibit 75 is on a printed form. *Prima facie*, there is no independent opinion of the doctor nor there is anything on record so as to indicate that doctor

had conducted medical examination to satisfy himself that the victim was conscious and oriented. It is also a fact that the incident was dated 29/12/2014 and the victim died on 08/01/2015. There was *prima facie*, sufficient time to record the dying declaration through any independent witness and not from the Police Department. As such *prima facie* we are satisfied that there are arguable points raised in this appeal and in view thereof, applicant is entitled to be released on bail during the pendency of the appeal. Accordingly we pass the following order.

ORDER

- (i) The application is allowed.
- (ii) During the pendency and final disposal of the appeal filed by the applicant, sentence of life imprisonment imposed upon the applicant for offence punishable under Section 302 of the IPC and sentence of imprisonment for seven years for offence punishable under Section 452 of the IPC, by judgment and order dated 28.09.2021 passed by Additional Sessions Judge, Amravati in Sessions Case No.69/2015, is hereby suspended.
- (iii) The applicant shall be released on bail on her executing PR. Bond of Rs.25,000/- with one solvent surety in the like amount to

the satisfaction of the learned Sessions Court.

(iv) The learned Sessions Judge, before whom the bail bonds will be executed, shall ensure that the fine amount imposed upon the applicant is deposited by her.

(v) The applicant will have to intimate her precise address of residence.

(vi) The applicant shall not leave the jurisdiction of this Court without leave of the Court.

(vii) The applicant shall remain present at the time of final hearing of the appeal.

(Smt. M.S. Jawalkar, J.)

(A.S.Chandurkar, J.)

Jayashree..