

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

CRIMINAL APPLICATION (APPA) NO.738/2021

IN

CRIMINAL APPEAL NO.554/2021

Ishwar s/o. Mahadeo Kuthe 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

Shri S. V. Sirpurkar, Advocate for Appellant/Applicant.

Shri T. A. Mirza, A.P.P. for Respondent/Non-applicant-State.

CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE : 14/03/2022.

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard Shri S. V. Sirpurkar, learned counsel for the appellant/applicant and Shri T. A. Mirza, learned A.P.P. for the respondent/State.

3. The appellant/applicant was convicted by the learned Sessions Judge, Chandrapur in Sessions Case No.82/2018 by judgment and order of conviction dated 03/08/2020 whereby the learned Judge found that the appellant is guilty of committing murder of his wife Indu and therefore, after recording the reasons, sentenced him to suffer imprisonment for life.

4. This appeal was listed before this Court on 15.12.2021. On that day this Court (Coram : M. S. Sonak

and Pushpa V. Ganediwala, JJ.) admitted the appeal and called for the record and proceedings for consideration of the application for suspension of substantive jail sentence and accordingly, the record and proceedings are received. Today, when this application was taken up for consideration, the record and proceedings are placed before us for our consideration.

5. The learned counsel for the appellant/applicant and the learned A.P.P. took us through the relevant evidence and the documents on record for the consideration of this application.

6. Admittedly, the applicant is the husband of deceased – Indu. The date of the incident is 23.08.2018. The law was set into motion by the applicant himself by lodging his oral report at Police Station, Bramhapuri on 23.08.2018 itself, which is at Exh. 49 culminating into the registration of crime against unknown person vide Crime No.748/2018 for the offence punishable under Section 302 of the Indian Penal Code.

7. As per First Information Report, the applicant is having 2 ½ acre land and from the marriage with the deceased, he is having two daughters Shubhangi 22 years old, Payal 20 years old and one son Kunal 19 years old. As per the report, on 23.08.2018, at 7 O' clock in the morning, he took his wife for cleaning left-out "Tur" in his

agricultural field and thereafter, he came to his house. According to the First Information Report at 5 O'clock, when he went to his agricultural field to fetch back his wife, he could not notice her and after searching, he found that his wife was lying on boundary in water, therefore, he called the neighbours of the agricultural field. It was found by him that there was a wound on her head. Thereafter, the body of the deceased was taken to the hospital.

8. During the course of the investigation, the Investigating Officer recorded statement of one Ramsingh, whose presence is mentioned by the applicant in the First Information Report itself. The statement is recorded on 24.08.2018 i.e. on the next date and in which he claimed that he has seen the incident and he is an eye witness in respect of the assault made by the applicant upon his wife. Therefore, the applicant was arrested. Postmortem report prepared by Autopsy Surgeon Sameer Nakhade (PW-3) shows one injury on left temporal region of the deceased.

9. *Prima facie*, we are of the view that the evidence of Ramsingh (PW-2) does not inspire confidence to show that he must have actually witnessed the incident of assault allegedly made by the applicant on his wife. His evidence shows that he has actually seen the incident in the early morning hour. His evidence shows that after the incident which he has witnessed, the applicant left the place of the incident and he alone was there at this place. His evidence

also suggest that Ramsingh is having cell phone with him. It is really unnatural conduct on the part of this man not to disclose such a serious incident which he has seen in which one lady has lost her life, to the police or anybody till 24.08.2018. In view of this, according to us, at least, at this stage, the case of the applicant needs consideration. Further there is no criminal antecedents at the discredit of the applicant. The applicant is in jail from 24.08.2018 till today.

10. In view of the above discussion, especially in respect of the evidence of Ramsingh (PW-2), we are of the view that the applicant has made out a case for suspension of substantive jail sentence and for grant of bail. Hence, we pass the following order.

ORDER

- i] Application is allowed.
- ii] The judgment and order of conviction in Sessions Case No.82/2018 dated 03.08.2020 passed by the learned Sessions Judge, Chandrapur shall remain suspended during the pendency of this appeal.
- iii] The applicant Ishwar S/o. Mahadeo Kuthe be released on bail on he executing P. R. bond of Rs.5000/- with one solvent surety in the like amount.

iv] The applicant shall report to the concerned Police Station once in six months during the pendency of this appeal.

v] At the time of final hearing, the applicant shall remain personally present before this Court.

11. All observations made in this order are, *prima facie*, and only for the decision of the present application.

12. With this directions, the application is disposed of.

JUDGE

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