



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.655 OF 2023
IN APPEAL/2/2023**

1. Dnyaneshwar Bhagwan Gaddime
Age : 35 years, Occu.: Labour,
R/o. Talikhed, Tq.Nilanga,
Dist.Latur

2. Bhagwan Vyankat Gaddime
Age: 70 years, Occu.: Agriculturist,
R/o.Talikhed, Tq.Nilanga,
Dist.Latur.

..Applicants

Versus

. The State of Maharashtra

..Respondent

...
Advocate for Applicants : Mr.Sudarshan J. Salunke
APP for Respondent : Mrs.V.S.Choudhari
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 11 OCTOBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. By instant application in Criminal Appeal No.2 of 2023, original accused nos.1 and 2, who stood convicted for charge under Section 302 and 498-A of the Indian Penal Code (IPC), are praying for suspension of sentence and grant of bail during pendency of the appeal.

2. Learned Counsel for the applicants pointed out that both the applicants

stood convicted vide judgment and order dated 22-11-2022 by learned Additional Sessions Judge, Nilanga, Dist.Latur in Sessions Case No.21 of 2017 for charge under Sections 302 and 498-A of the Indian Penal Code. It is submitted that there was charge and accusation about deceased Mahadevi being incinerated. Accusations are made that accused husband was addicted to liquor. That there was mal-treatment. That because of addiction, it is alleged that he used to demand money for consuming liquor and on refusal, it is alleged that kerosene was poured by accused persons and deceased was set on fire. According to learned Counsel, **PW2** Venkat Gundaji Potle, father of deceased, has not supported prosecution, likewise **PW3** Tukaram Govind Potle, cousin of deceased, has also not supported prosecution. That not only near and dear ones but neighbours have not supported prosecution, still learned trial Judge has accepted the dying declarations and convicted accused. It is pointed out that dying declarations are not free from doubt. That as there was no proper appreciation of evidence and application of law, both applicants - convict have preferred appeal questioning the legality of the judgment and therefore, till hearing of the appeal, it is prayed that sentence be suspended and accused be set at liberty by granting bail.

3. In the light of above submissions, we have *prima facie* gone through the evidence on record. There is no doubt that deceased Mahadevi had died due to 46% burns, which resulted in septicemia. There is further no dispute that

crime was registered on the basis of dying declaration Exh.65 recorded by **PW6** Sneha Sakharam Pimparkhede. Dying declaration Exh.65 shows that on 29-04-2017 at around 05:30 p.m. after returning from work while she was cooking, husband came under the influence of liquor, abused her. Parents-in-law also reached there and they too abused her. She has attributed role of pouring of kerosene to husband and role of igniting her by throwing chimney to father-in-law.

Second dying declaration Exh.95 is also *prima facie* found to be consistent about roles played by accused persons. Accused were not on bail during trial.

4. It is fairly settled position that while suspending or staying order of conviction, relevant factors are degree of probability of appeal being finally allowed, nature and gravity of offence, the age and health of accused etc. Therefore, the best and probably only the guide for suspension of sentence is probability of appeal being allowed. Law to that extent is spelt out in the case of ***Laxman Malhari Sable v. State of Maharashtra; 1997 (2) Mh.L.J. 780.***

5. Taking into consideration the above factors, we have *prima facie* gone through the evidence and do not find it a fit case to grant relief as prayed. Hence, no case being made out for suspension of sentence or grant of bail, we proceed to pass following order.

ORDER

Criminal Application No.655 of 2023 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT