

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 CRIMINAL APPLICATION NO.744 OF 2023
IN
CRIMINAL APPEAL NO.154 OF 2023

Rushikesh Dnyaneshwar Narode,
Age 29 yrs., Occ. Agri.,
R/o Maliwadgaon, Tq. Gangapur,
Dist. Aurangabad.

... Applicant

... Versus ...

The State of Maharashtra
Through Police Station Shilegaon,
Tq. Gangapur, Dist. Aurangabad.

... Respondent

...

Mr. M.R. Khutwad, Advocate for applicant

Mrs. V.S. Choudhari, APP for respondent

...

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

DATE : 11th SEPTEMBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for suspension of substantive

sentence imposed against the applicant/appellant by judgment and order dated 22.12.2022 passed by learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Sessions Case No.59/2018. The applicant has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer simple imprisonment for six months for committing offence punishable under Section 302 of the Indian Penal Code.

2 It is the prosecution story that one Vaijinath Hari Gawali lodged the First Information Report on 21.06.2018 in respect of the incident that had taken place on 20.06.2018. It is in respect of alleged murder that his son-in-law Suresh Jite, who had given oral dying declaration to Vaijinath and others had reached to the spot. It is alleged that present applicant was following the niece of deceased Suresh, for which Suresh had given him understanding. The appellant had grudge in his mind and six months prior to the First Information Report the niece of the deceased got married to another boy, which triggered his annoyance. It has been alleged that the appellant had stabbed deceased in his stomach with the help of a knife.

3 Heard learned Advocate Mr. M.R. Khutwad for the applicant and learned APP Mrs. V.S. Choudhari for the respondent.

4 It has been vehemently submitted on behalf of the appellant that the learned trial Judge has not appreciated the evidence properly. Informant Vaijinath was admittedly not present when the alleged incident took place and he states that when he reached the spot the deceased was lying on the ground. According to him, deceased was in a position to speak and then he narrated that he was stabbed by the appellant and co-accused Vivek. According to the informant, he found deceased Suresh in a pool of blood around 9.00 to 9.15 p.m., however, his testimony is not fully corroborated by PW 5 Akash. PW 6 is the girl to whom appellant used to follow and she had narrated the said incidents to her family members including her uncle deceased Suresh. The motive is very weak and except the alleged oral dying declaration there is nothing and, therefore, with this evidence the appellant need not be kept behind the bars. He has good hopes in the appeal and, therefore, his substantive sentence be suspended till the final hearing of the appeal.

5 Per contra, the learned APP opposed the application and supported the reasons given by the learned trial Judge. It is submitted that there was sufficient evidence adduced by the prosecution beyond reasonable doubt to prove that the appellant is the author of the crime. The oral dying declaration was given to PW 1 Vaijinath and it has been corroborated by PW

5 Akash. The evidence of the Medical Officer would show that it is homicidal death with knife, which has been recovered under memorandum panchnama and, therefore, when there is strong evidence against the appellant, he need not be released on bail.

6 Here, it is to be noted that as per the prosecution story, the incident had taken place in a field belonging to one Wani. The prosecution case rested on the oral dying declaration and the discovery panchnama. No doubt, from the medical evidence it appears that it was homicidal death, however, as per the First Information Report and testimony of PW 1 Vaijinath he was along with his brother Sominath Gawali, Rahul Gawali, Sanjay Gawali, when he was asked by his brother to take out the vehicle as they want to go to field where son-in-law has been assaulted. His oral dying declaration has been considered as weak type of evidence and whether on the basis of oral dying declaration and alleged discovery panchnama conviction can be awarded is also required to be considered. Further, as per the dying declaration stated in the First Information Report Suresh had informed that he has been stabbed by one Ravi who is son of Sominath Devkar and Rushikesh son of Dnyaneshwar Narode i.e. present appellant. Original accused No.2 Ravi Sominath Devkar is child in conflict with law and has been made as an accused. Accused No.2 Vivek Vilas Shrikhande, who is

accused No.3 as per charge sheet, was prosecuted for offence under Section 201 but he has been acquitted. As per the testimony of PW 6 – the girl, the incident of appellant following her had taken place in the year 2017 and the present incident has taken place on 20.06.2018. Whether there is any proximity between the incidents and whether that can be the motive, is also required to be decided. Under the said circumstance, we find this to be the fit case where the appellant should be released on bail by suspending the sentence pending appeal. The appeal is admitted and it will take long time to be heard and disposed of. Hence, following order.

ORDER

1 Application stands allowed and disposed of.

2 The substantive sentence awarded against the applicant/
appellant in Sessions Case No.59/2018 by learned Additional Sessions Judge,
Vaijapur, Dist. Aurangabad on 22.12.2022 stands suspended till the final
hearing and disposal of Criminal Appeal No.154 of 2023.

3 Applicant Rushikesh Dnyaneshwar Narode be released on P.R. of
Rs.50,000/- (Rupees Fifty Thousand only) and two solvent sureties of
Rs.25,000/- (Rupees Twenty Five Thousand only) each.

4 The applicant shall not commit any criminal activity.

5 The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

6 In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

7 Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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