

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.921 OF 2023
IN
CRIMINAL APPEAL NO.270 OF 2023

Sudhir Shankarao Bandgar alias Patil,
Age 41 yrs., Occ. Nil,
R/o Ashiv, Tq. Ausa, Dist. Latur.

... Applicant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station, Bhada,
Tq. Ausa, Dist. Latur.
- 2 Lata Sudhir Bandgar,
Age 34 yrs., Occ. Household,
R/o Ashiv, Tq. Ausa, Dist. Latur.

... Respondents

...

Mr. R.J. Nirmal, Advocate for applicant

Mr. S.D. Ghayal, APP for respondent No.1

Ms. Kajal P. Angarkhe, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI
S.G. CHAPALGAONKAR, JJ.

DATE : 05th JULY, 2023

ORDER : (SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for suspension of substantive sentence imposed on the appellant/applicant in Sessions Case No.9/2021 after holding him guilty of committing offence punishable under Section 302 of the Indian Penal Code by learned Sessions Judge, Latur on 17.11.2022. The appellant stood prosecuted for committing murder of his own daughter.

2 Heard learned Advocate Mr. R.J. Nirmal for the appellant/applicant, learned APP Mr. S.D. Ghayal for respondent No.1 and learned appointed Advocate Ms. Kajal P. Angarkhe for respondent No.2. With the able assistance of learned Advocates we have gone through the record which was before the Trial Court.

3 In order to cut short it can be stated that the learned Advocate for the appellant/applicant has tried to submit that there is no proper appreciation of evidence by the learned Sessions Judge. It was not considered by the learned Trial Judge that there was inordinate delay in lodging the report, there were contradictions and omissions. Though the Postmortem Report says that the probable cause of death is head injury, but the Medical Officer in his cross-examination has admitted that the injuries mentioned in column No.17 are possible when any person falls on the ground accidentally on his back. The material improvements were in the nature of previous incident and the relative of the informant/wife of the appellant is an

Advocate. Possibility of tutoring cannot be ruled out and the fact that there was dispute between the husband and wife. As the appeal is admitted and the appellant has every hope of success, he need not be kept behind the bars.

4 Per contra, the learned APP supported the reasons given by the learned Sessions Judge and submitted that the informant is the wife of the accused/mother of the deceased. She has given account of every moment and, therefore, it has been held by the learned Sessions Judge that there was no inordinate delay. The preference that was given by the lady was to save the child. The accused was not on bail throughout the trial and, therefore, this is not the fit case to suspend the sentence of the appellant/applicant.

5 We have considered the evidence at this stage to see whether the sentence can be suspended during pendency of the appeal. The first and the foremost fact is that the appellant was never released on bail throughout the trial. Informant PW 4 Lata is the wife of accused and mother of deceased as well as eye witness to the incident. She has stated about an incident that had occurred on the earlier day, at that time deceased Sakshi had thrown a stone, which accidentally hit the accused. It is stated that at that time also accused had threatened the daughter that he would kill her. The incident is stated to have taken place at about 7.00 to 7.30 a.m. on the next day i.e. 15.11.2020.

No doubt, there are improvements, whether those are material and going to the root of the case are required to be considered. The improvements are bound to be there, but unless it is proved that those are material and would change the stand otherwise, they cannot be so considered. Even at this stage we can make a passing reference to the fact that at certain time the accused has taken a stand that he was present at the said place, as he is suggesting that Sakshi got injured after fall. If that is so, then why he had not taken the girl to hospital has not been explained. Further, it is not his defence that he was there at the hospital at any later point of time and then received the dead body of the girl and performed her last rites, in the capacity as her father. No doubt, the circumstances which were put to him under Section 313 of the Code of Criminal Procedure but those suggestions were not put to PW 4 Lata. Whether the dispute between Lata and accused was of such an intensity that she could implicate the accused after the daughter had allegedly sustained injuries due to fall and died is also required to be considered, but certainly with the evidence that has been brought on record, we do not find this is to be a fit case to release the accused on bail by suspending sentence. Application stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)