

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1286 OF 2022
IN
CRIMINAL APPEAL NO. 276 OF 2022

Shaikh Salim S/o Shaikh Ismail
Age 62 Years, Occu. : Labour
R/o. Municipal Colony, Hingoli,
Tq. & Dist. Hingoli.

... **Applicant**
(Accused)

Versus

State of Maharashtra
Through Police Station Hingoli (City),
Tq. & Dist. Hingoli.

... **Respondent**

...
Mr. M. S. Shaikh h/f. Mr. S. S. Deshmukh, Advocate for Applicant.
Mr. R. V. Dasalkar, APP for Respondent-State.

...

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

DATE : 16th JANUARY 2023.

ORDER (ABHAY S. WAGHWASE, J.) :

Appellant-accused, who is convicted by learned Additional Sessions Judge Hingoli in Sessions Case No. 36 of 2017 for offence punishable under section 302 of Indian Penal Code, vide instant application has put up prayers for suspension of sentence and enlargement on bail pending appeal.

2. Taking us through the evidence adduced in trial court by the prosecution, it is submitted that there is no direct eye witness about involvement of accused. It is submitted that there is false implication. Taking us through the evidence of **PW-1 Amin** and **PW-2 Rahim**, it is submitted that these witnesses have not supported the prosecution. According to prosecution, **PW-3 Kailas** was in the house and he had heard quarrel in the house between the husband and wife. However, cross-examination of this witness shows that he was very much in the office on the entire day on 27-05-2017, and therefore, his evidence about hearing quarrel from the house of accused is rendered doubtful. That, it is the case of prosecution that accused surrendered himself along with knife at police station, but learned counsel emphasized that such quality of evidence cannot be taken into account or taken support by prosecution. That, though prosecution has adduced evidence of neighbours, it is doubtful whether they had any occasion to see accused in the house. That, their cross-examination itself belied their examination-in-chief. That, cross-examination of all prosecution witnesses clearly shows that there is nothing to hold accused responsible for death of his wife. Learned counsel submitted that applicant has a strong case in appeal and hence the same be admitted. That, conviction being of 2022, it will take long time to hear the said appeal and therefore, it would not be just and proper to keep applicant-accused languished in jail and hence, above prayers for suspension of sentence and enlargement on bail.

3. Learned APP strongly opposed by pointing out that accused had regular quarrels with his deceased wife and that it was a routine affair. That, on 27.05.2017 also accused had fought and quarreled with his wife. That, he had thereafter stabbed her with *khanjir* at various places including vital parts and she had died on the spot. That, evidence reveals that, there was recovery at the instance of accused. Analysis of clothes and weapon also shows involvement of applicant for committing brutal murder of his wife and therefore, prayers made are liable to be rejected.

4. We have heard learned counsel for the appellant as well learned APP for State.

5. We have also gone through the evidence adduced by prosecution in trial court. It seems that sons of accused-applicant and deceased have apparently not supported the prosecution. However, **PW-1 Amin** in the examination-in-chief spoke about the incident to be taken place on 27.05.2017 in house and that there was quarrel between his parents. As regards to the day of occurrence is concerned, it is his evidence that after taking breakfast, he went for work and while he was at work place he received phone call from one Thite informing him about hearing cries of his mother and so he rushed home. He claims that when he returned home, his both brothers were present there

and he saw his mother lying on the steps in injured condition and therefore she was taken to hospital. There she was examined and declared dead.

We have also gone through the evidence of second son **PW-2 Rahim**. He also states about parents quarreling and their relations to be strained. That on 27-05-2017, information was received that quarrels between their parents were going on and so he was called. Recovery of weapon seems to be in presence of **PW-6 Nitin** and he has testified to that extent. **PW-7 Dr. Ajay**, who was autopsy Doctor, has been examined by prosecution in trial court and he claims that at the time of autopsy he had come across stab injuries on neck, on left hypo chondrial region, on left shoulder region medial to acromio clavicular joint, over base of neck left lateral side, incised wounds over left side of frontal region of skull, over right temporal region of skull and linear abrasion on left forearm volar. On internal examination, Doctor found traumatic transection of jugular vein to be damaged.

6. Taking into account such nature of injuries and the site of injuries, it can safely be inferred that deceased succumbed to the injuries at the spot itself. As discussed above, evidence shows that there is recovery of weapon at the instance of appellant-accused and C.A. report seems to be positive. Taking into account such quality of material on record, we do not find it a fit case for granting bail to the appellant and hence we proceed to pass following order :-

ORDER

Criminal application is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

Tandale