



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

**CRIMINAL APPLICATION NO.1711 OF 2023
IN APPEAL/391/2023**

Jamil Khan Hussain Khan

Age : 35 years, Occu.: Contractor,
R/o. Bari Colony, House of Shaker Khan,
Hasmat, in front of Rahim Masjid,
Aurangabad.

..Applicant

Versus

1. The State of Maharashtra

2. Mehar Fatima w/o. Sayyed Shafi
Age: 40 yrs. Occu.: Household,
R/o.Nagsen Colony, Roshan Gate,
Aurangabad.

..Respondents

...

Advocate for Applicant : Mr.Satej S.Jadhav

APP for Respondent no.1 : Mrs.V.S.Choudhari

Advocate for Respondent no.2 : Ms.Ashwini Annasaheb Lomte

...

**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.391 of 2023, original accused, who stood convicted for charge under Section 302 and d 201 of the Indian Penal Code (IPC), is praying for suspension of sentence and grant of bail during pendency of the appeal.

2. Apprising us about the charge, learned Counsel for the applicant submits that here case of prosecution is in absence of reliable direct eye witness account. That all so called eye witnesses examined by prosecution are exposed to be not at all eye witnesses or direct eye witnesses. He submitted that important witnesses have resiled and have not supported prosecution. According to him, there is no evidence regarding motive. He would submit that all interested witnesses are examined and there is no independent witness, who is supporting prosecution. That recovery is doubtful. There is no prompt lodgment of complaint. Further, according to him, there is strong case in appeal, which has been preferred by the applicant, however, much more time would be taken to decide the appeal and therefore, prayers for suspension of sentence and grant of bail.

3. Here applicant convict has prayed for suspension of sentence and grant of bail during pendency of appeal by which he has questioned judgment and order of conviction passed by the learned Additional Sessions Judge (Court No.7), Aurangabad in Sessions Case No.655 of 2019.

4. Here it seems that applicant appellant was booked for charge under Sections 302 and 201 of the Indian Penal Code alleging committing of murder of Sayyed Shafi. It seems that in the backdrop of failure to complete construction work inspite of payment, quarrels used to take place between

accused and deceased. According to prosecution, on 24-04-2019, deceased was stabbed in neck with knife by accused and committed his murder. It seems that prosecution has examined over 20 witnesses in support of its case.

Informant **PW1** Kazi Sayyed Riyaz seems to be brother of deceased. Admittedly, on receipt of information, he has reached the spot and shifted deceased to hospital. Therefore, he is not an eye witness.

PW6 seems to be the important witness and he has narrated that while he was taking tea at that time, he heard that there was altercation of words between accused and deceased and accused Jamil gave blow of knife on the neck of Shafi. According to him, knife got stuck in the neck of deceased. Even there seems to be some video recording of occurrence.

No doubt **PW5** Shaikh Moinuddin Shaikh Jalaloddin, **PW7** Mohammad Sayyed Mohammad Islam and **PW8** Sayyed Rafat Ali have not supported the prosecution, but by examining **PW9** Dr.Manohar Kashinath Shelke, death is shown due to “shock and hemorrhage due to stab injuries over neck”. There is recovery at the instance of accused. Therefore, offence is serious.

5. 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.*

6. Bearing above factors in mind, in the present case it appears that here there is direct eye witness and on the complete appreciation and analysis guilt has been recorded. It is serious offence. Applicant was not on bail during trial. On taking survey of above discussed material, we are not inclined to either suspend sentence or grant bail as prayed for. Accordingly, following order is passed.

ORDER

Criminal Application No.1711 of 2023 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT