

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1636 OF 2023
IN APEAL/58/2022 WITH APEAL/58/2022**

**SOMNATH SHIVAJI SALUNKE
VERSUS
THE STATE OF MAHARASHTRA**

...

Advocate for Applicant : Mr. Vilas P Savant
APP for Respondents: Mrs. V.S. Chaudhari.

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

DATE : 5TH JULY, 2023

PC:-

Present application has been filed for suspension of substantive sentence imposed by the learned Sessions Judge, Latur in Sessions Case no. 116 of 2019 on 18.9.2021 against the appellant after holding him guilty of committing the offence punishable under Section 302 of IPC. The appellant stood prosecuted for committing murder of his own 8 month's son.

2. Heard Mr. Savant for the applicant and with the able assistance of learned advocates of both sides, we have gone through the material which was before the trial judge. With the limited scope of the inquiry as regards present application is concerned, we are assessing the evidence. The post mortem report (Exhibit 60) would show the probable cause of death as due to the head injury. In all 15 external injuries have been noted in column No.17. Though the learned advocate for the appellant tries to convince us that 7 out of those injuries are not connected to the incident, but they are in respect of fracture that was

sustained by the deceased earlier. However, the ultimate analysis by the medical Officer is that death was due to head injury. In his cross-examination, he has admitted that except the head injury and thigh injury, all injuries were simple in nature. The treatment in respect of fracture of the thigh was already taken. In categorical terms he has stated for injuries on the head are not possible by fall of the child as a result of the scuffle between the couple. PW-1 informant Madhuri is the wife of the present appellant and she is the eye witness.

3. The learned advocate for appellant tried to further convince us that there was no motive for the accused to commit murder of his son. That can be considered at the time of final hearing. But, since the prosecution has come with direct evidence then, whether the absence of motive can be an advantage to the accused, will have to be considered at the stage of final hearing. The wife has tried to give the behaviour of the accused with the child in the past; whether that can be considered as a motive is also required to be appreciated.

4. The entire record would show that there is evidence against the present appellant. The appellant was not released on bail throughout the trial. Under such circumstances, we do not find this to be a fit case where the appellant should be released on bail by suspending the sentence during the pendency of the appeal.

5. The application stands rejected.

[S.G. CHAPALAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-