

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

**CRIMINAL APPLICATION NO.1196 OF 2021
IN
CRIMINAL APPEAL NO.538 OF 2022**

Shivaji S/o Mahadu @ Mahadev Pathak,
Age-41 years, Occu:Agril.,
R/o-Jebapimpri, Tq. and Dist-Beed.

...APPLICANT

VERSUS

The State of Maharashtra,
Through its Police Station,
Bidkin Police Station, Bidkin,
Tq-Paithan, Dist-Aurangabad.

...RESPONDENT

...
Mr. S.A. Ambilwade Advocate for Applicant.
Ms. V.S. Choudhari, A.P.P. for Respondent - State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 5th APRIL, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for suspension of sentence imposed, in Sessions Case No.15 of 2018 by the learned Additional Sessions Judge, Aurangabad on 10th January 2020, on the applicant / appellant after holding him guilty of

committing offence under Section 302 of the Indian Penal Code. The appellant has been directed to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to suffer rigorous imprisonment for three months.

2. The applicant stood prosecuted for committing murder of his wife Archana. Archana got married to the applicant - accused on 17th March 2010. They have a son. Accused used to do tailoring work and they were residing in rented premises owned by one Avinash Gadekar, situated at village Chitegaon.

3. It is the prosecution story that after initial happy married life, the accused started suspecting chastity of his wife and used to harass her on that count. He picked up quarrel at about 3.00 a.m., on 13th May 2023 on the same count and at that time the accused took out scissor and inflicted blows by means of said scissor on the left side of abdomen, below the part of chest, below the neck, near the wrist of left hand, right hand forearm and also on the throat of the victim. Archana sustained grievous injuries. The accused ran away from the spot. The victim had then gone to the house of neighbour Pardhe and made phone call to her relative, narrated the incident and thereafter the

relative came and took the victim to Government Hospital, Aurangabad, where she was admitted, but later on she succumbed to the injuries.

4. After considering the evidence of near about 14 witnesses and the documents on record, the learned trial Judge has held the accused guilty.

5. Heard learned Advocate Mr. Ambilwade appearing for the applicant and learned APP Ms. Choudhari appearing for the State and perused the paper-book.

6. The evidence of Dr. Vikas Rathod, who had conducted the autopsy, would show that the probable cause of death was 'septicemia in a post-operative case of stab injury over abdomen'. *Prima facie* the said evidence supports the contention of the prosecution that the death is homicidal in nature. The prosecution has also relied on the dying declaration of Archana, given on the day of incident i.e. 13th May 2013 and it was recorded by PW-1 PSI Shegaonkar. The learned trial Judge has held that the said dying declaration has been properly proved. Further, even PW-2 Dr. Vishal Mahankale who was serving as

casualty medical officer, has stated that the history of assault was given by deceased Archana at the time of admission. Prosecution has also examined the neighbour PW-8 Kishor Pardhe. He has stated that door of his house was knocked around 4 to 4.30 a.m., on 13th May 2013 and Archana was found there in injured condition. Archana narrated everything, that means this witness is on the point of oral dying declaration. PW-9 Ganpat Mithe is the father of deceased Archana, who had also gone to the said place after the incident and to him also oral dying declaration has been given. Thereafter, there is discovery at the hands of the applicant. Therefore, we are of the opinion that there is material on record which was considered by the learned trial Court while convicting the accused.

7. Interesting point to be noted is that though the offence was committed on 13th May 2013, it has come on record that accused came to be arrested on 11th December 2017. That means, for about four years accused was absconding. Further, we could find out from the record that the accused was involved in another crime i.e. Crime No.126 of 2002 registered with Neknoor Police Station, District-Beed for the offence punishable under Sections 302, 498-A read with Section 34 of the Indian

Penal Code. In that matter applicant came to be arrested on 17th August 2017 and then he was got transferred in this offence, which was registered with Bidkin Police Station, Taluka-Paithan, District-Aurangabad. That means, first wife of the accused was also murdered and it is alleged that he has committed her murder. Thus, it has come on record that accused was absconding for considerable period. Under such circumstances, if the applicant is released on bail by suspending the sentence, possibility of he getting absconding cannot be ruled out. Independently also there appears to be evidence against the accused dis-entitling him from suspension of sentence and thus the application deserves to be rejected.

8. The Application, therefore, stands rejected.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE