

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 CRIMINAL APPLICATION NO. 1783 OF 2023
IN
CRIMINAL APPEAL NO. 299 OF 2023

Munnibai d/o Sayyed Aleem,
Age: 30 years, Occupation Labour,
R/o. Sindhi Camp, Jira Bavdi Khadan, Akola.
At present R/o. Near Janta High School,
Shindkheda, Taluka Shindkheda,
District Dhule.

... Applicant

Versus

The State of Maharashtra
Through Police Station Officer
Shindkheda Police Station, Shindkheda,
Taluka Shindkheda, District Dhule.

... Respondent

.....
Advocate for Applicant : Mr. A. R. Syed h/f Mr. Sushil P. Pandit
APP for Respondent-State : Mr. S. D. Ghayal
.....

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

DATED : 16 OCTOBER 2023

PER COURT :-

1. The present application has been filed for suspension of substantive sentence. The applicant is the original accused in Sessions Case No. 8 of 2019, who came to be convicted by learned Sessions Judge, Dhule on 20.03.2023 for the offence punishable under Section 302 of the Indian Penal Code (IPC). She has been sentenced to suffer

imprisonment for life and to pay fine of Rs.3,000/-, in default to suffer simple imprisonment for three months.

2. Heard Mr. A. R. Syed h/f Mr. Sushil P. Pandit, Advocate for the applicant as well as Mr. S. D. Ghayal, APP for the respondent State.

3. We have gone through the paper book which is now ready. It appears from the charge that the incident had taken place in the house of one Kamalbai at about 10.30 p.m. on 07.08.2018. However, it has been stated that said Kamalbai or a person in whose possession that house is, has not been examined. Though it appears that the prosecution has examined in all 10 witnesses to bring home guilt of the accused, the case is mainly resting on two dying declarations. The postmortem report shows that deceased Vanita expired on 22.08.2018 and her postmortem was conducted on the same day and probable cause of death is "septicemia due to burns". The postmortem report has been exhibited as the defence had given no objection, that by itself will not prove that the death is homicidal in nature. Several witnesses have turned hostile, including the spot pancha and other panchas to seizure. Some other witnesses like PW3 Pinki and PW4 Sayrabi were posed as eye witnesses, but they have also turned hostile. The two dying declarations have been proved by examining

the writers and also the doctor who certified about the health status. Those dying declarations are required to be re-assessed as they lack the history, as well as in the background of MLC that has been given wherein it is said that she had poured kerosene upon herself, and also the contents of the spot panchanama. There appears to be no relationship between the deceased and the accused. Additional point in favour of the applicant is that since 01.10.2018 till date of judgment i.e. 20.03.2023, she was on bail. Under said circumstance, reasons are made for granting suspension of sentence and releasing her on bail. Hence, we proceed to pass the following order:

ORDER

- I. The application stands allowed.
- II. The substantive sentence imposed on the applicant in Sessions Case No. 8 of 2019 by the learned Sessions Judge, Dhule on 20.03.2023 stands suspended till the final hearing and disposal of Criminal Appeal No. 299 of 2023.
- III. The applicant Munnibai d/o Sayyed Aleem be released on P.R. of Rs.30,000/- (Rupees thirty thousand only) with two solvent sureties of Rs.15,000/- (Rupees fifteen thousand only) each.

IV. The applicant shall not commit any criminal activity.

V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date she tenders bail papers and thereafter, the trial Judge to fix dates for her subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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