

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 CRIMINAL APPLICATION NO. 1846 OF 2022
IN APEAL/597/2022 WITH APEAL/597/2022

MADHAV S/O BHAIROBA SHIRFULE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. Madhukar M. Parghane
APP for Respondent-State : Mr. R. V. Dasalkar
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 21 FEBRUARY 2023

PER COURT :-

1. Present application is filed for suspension of substantive sentence imposed on the applicant in Sessions Case No. 2 of 2014 by learned Additional Sessions Judge, Bhokar, District Nanded on 06.11.2015 after holding him guilty of committing offence punishable under Section 302 of the Indian Penal Code (IPC).
2. Heard learned Advocate for the applicant-appellant as well as learned APP for the respondent State.
3. With the able assistance of both sides, we have gone through the documents which were before the learned trial Judge. The

applicant-appellant faced the charge for committing double murder. One Sanjay and Satwashila, who were husband and wife, were sleeping in the court-yard surrounded by boundary wall with a locked gate on 04.06.2013. At midnight, the accused poured petrol on them and set them to fire. When Sanjay cried for help and rushed towards house of neighbours, PW1 Pundlik, PW5 Savita and PW11 Kerba came to the spot. They extinguished the fire and shifted Sanjay and Satwashila to Primary Health Center at Hadgaon and then they were taken to Adhar Hospital, Nanded. It appears that they were then shifted to Hyderabad for further treatment, however Sanjay succumbed to the injuries on 07.06.2013 and Satwashila succumbed to her injuries on 10.06.2013.

4. Prosecution has examined in all 20 witnesses to bring home the guilt of the accused. There are two dying declarations, one given by Sanjay and another by Satwashila. Sanjay gave dying declaration on 05.06.2013 around 12.45 p.m. and Satwashila gave dying declaration on 05.06.2013 around 01.15 p.m. Learned trial Judge has held that both the dying declarations Exhibits 54 and 55 have been proved. They both have stated that accused was annoyed with Sanjay as he had given complaint about theft in his house against the appellant and the said theft had taken place about 3 to 4 months prior to the

incident. Further, the prosecution case appears to be based on oral dying declarations to the neighbours also. Though learned Advocate appearing for the appellant submits that there are many contradictions and omissions in the testimony of the prosecution witnesses, it is to be noted that all those witnesses have undergone the ordeal of cross-examination and scrutiny of the said evidence has been done by the learned trial Judge. The postmortem report and the other medical evidence shows that both of them had sustained around 90% injuries, however succumbed to death due to septicaemia due to the burns. There appears to be sufficient evidence at this *prima facie* stage against the appellant and therefore this cannot be a fit case to suspend the sentence.

5. Learned Advocate for the appellant submits that the conviction was awarded by the learned trial Judge on 06.11.2015 but the appellant had then not preferred any appeal. He was released on parole and then he came to know about his right to file appeal. Therefore, he has filed the appeal in 2022. He prays for expeditious hearing of the appeal.

6. No doubt learned Additional Sessions Judge has convicted the accused on 06.11.2015. It appears that accused had not preferred

appeal. Now it is preferred with application for condonation of delay of 2344 days and this Court by order dated 10.08.2022 has condoned the delay for the reasons stated in the application. Under such circumstance, we may say that we are expediting the appeal, however it cannot be said that it would be heard in a particular time slot. If it is convenient to this Court, then it would be taken for hearing by giving preference.

7. Appeal to be listed after receipt of record and proceedings with paper-book.

8. Application for suspension of sentence stands rejected.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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