

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

**CRIMINAL APPLICATION NO.1921 OF 2023
IN APEAL/458/2023 WITH APEAL/458/2023**

**AMOL NIVRUTTI KHARAT
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. A. B. Ghule
APP for Respondent: Mr. Y. G. Gujarathi

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CORAM : S. G. MEHARE, J.

DATE : 25.07.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.PP for the respondent/State.
2. The applicant is seeking suspension of sentence to suffer rigorous imprisonment for 10 years for the offence punishable under Section 304-B of the Indian Penal Code, by the learned Additional Sessions Judge, Jalna in Sessions Case No.33 of 2017, vide order dated 16.5.2023.
3. The learned counsel for the applicant would submit that the marriage between the applicant and deceased was not proved. The false allegations were levelled against him that he was the husband of

the deceased. There was no legal and valid marriage, therefore, Section 304-B of the Indian Penal Code would not apply. He would argue that the learned Judge, accepting non-existence of the legal marriage, acquitted the applicant for the offence punishable under Section 498-A of the Indian Penal Code. However, convicted him under Section 304-B of the Indian Penal Code. This serious discrepancy has been recorded by the learned Additional Sessions Judge. If the marriage was not existing, Section 304-B of the Indian Penal Code would not attract in any way for the reason that Section 304-B of the Indian Penal Code lays down the dowry death of the wife within seven years of her marriage. The applicant has referred to the findings of the learned Additional Sessions Judge. He pointed out that the case of *P Shivakumar and others Vs. State Criminal Appeal No. 1404 of 2012 (Supreme Court) decided on 09.02.2023* has been referred and it is erroneously held that though the accused cannot be convicted for the offence punishable under Section 498-A of the Indian penal Code, he may be convicted for the offence punishable under Section 304-B of the Indian Penal Code. *Prima facie*, legal error has been committed in convicting the applicant. The applicant was on bail throughout the trial. He never misused bail granted to him. There were no antecedents to his discredit. Hence, sentence may be suspended.

4. Per contra, the learned A.P.P would submit that the applicant and deceased were residing together in one room. They have performed marriage. She was ill-treated for demand of dowry. Her dead body was found lying in the well. They were living as husband and wife in the society. The evidence is cogent and reliable. Hence, the applicant has been correctly convicted. The offence is serious. The woman has lost her life. The applicant has been convicted for ten years, therefore, the sentence may not be suspended.

5. It is a question of law to appreciate whether in the facts and circumstances of the case, the accused may be held guilty and convicted for the offence punishable under Section 304-B of the Indian Penal Code, as trial Court has recorded a finding that since there was no legal and valid marriage, Section 498-A of the Indian Penal Code would not attract. Whether the offence pertains to the legally married woman, the evidence reveals that the deceased and the accused were residing together under one roof. However, there was no legal and valid marriage as observed by the learned Trial Court. Bearing in mind the normal rule that when the appeal of a person convicted; the sentence passed on him should be suspended, unless any exceptional reason existing therein requires the denial of the same. In view of the facts the suspension of sentence therefore would not cause harm to the

prosecution. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) The execution, implementation, operation and effect of the sentence to suffer rigorous imprisonment of 10 years imposed by the learned Additional Sessions Judge No. II, Jalna vide Judgment and order passed in Sessions Case No. 33 of 2017 dated 16.05.2023 for the offences punishable under Section 304-B of the Indian Penal Code is suspended till conclusion of the appeal.
- (iii) The applicant shall be released on bail on executing P.B and S.B. of Rs. 50,000/- with one solvent surety of the like amount.
- (iv) Bail before the learned Additional Session Judge II, Jalna.

(S. G. MEHARE)
JUDGE