

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2022 OF 2022
IN APEAL/454/2022

Gorakh @ Gorakshnath Kisan Karpe

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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Mrs. Pratibha Jagdish Bharad, Advocate for the applicant.
Mrs. V. S. Choudhari, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : 27th June, 2023

ORDER :-

. Present application has been filed under Section 389 of the Code of Criminal Procedure for suspending the sentence and releasing the applicant on bail. The applicant stood prosecuted for committing offence punishable under Section 302 of Indian Penal Code before the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.94 of 2021. It is alleged that he has committed murder of his own son. After hearing both sides and perusing the evidence, the learned Additional Sessions Judge, Ahmednagar hold the applicant – accused guilty and sentenced him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer

rigorous imprisonment for one year.

2. Heard learned Advocate Mrs. Pratibha Bharad for the applicant and learned APP Mrs. V. S. Choudhari for the respondent – State. With the able assistance of learned APP, we have gone through the evidence, which was before the Trial Court.

3. The case rests on direct as well as circumstantial evidence. The informant P.W.1 Tarabai is the mother of the deceased and wife of the present applicant as well as she is the eye witness. The second witness on which the prosecution has relied is P.W.4 Muktabai, who is also the eye witness, real sister of Tarabai as well as her sister-in-law. P.W.2 Satish is the neighbouring farmer who had seen the accused running with iron rod before the incident and then P.W.2 rushed to the spot after the incident. In short, he was the person who immediately went to the spot and then from P.W.1 and P.W.4, he got the information. The testimony of the eye witnesses stood supported as regards the homicidal death is concerned with the medical evidence. The autopsy report says that the probable cause of death is head injury due to trauma over head due to hard, blunt and heavy object. There is also the report by the medical officer after murder weapon was sent to him that such injuries as noted by him on the dead body were possible by the said weapon. P.W.6 Shivaji is the panch witness to the discovery panchanama. It appears that immediately after the incident the

injured was shifted to Maccare Hospital, Ahmednagar and was examined by PW.7 Dr. Mohd. Majid. Deceased was admitted to the hospital around 5.30 a.m. and he expired at 7.15 a.m. Therefore, P.W.7 Dr. Mohd. Majid has given the account of the treatment that was given to the deceased at his hospital.

4. It is tried to be submitted on behalf of the applicant that the alleged eye witnesses are interested witnesses. Though the applicant has admitted that his son has been murdered, but the applicant denies that he was the author of the crime. Due to the dispute between himself and his wife i.e. PW.1 Tarabai, he has been falsely implicated.

5. We cannot undermine the fact that PW.1 Tarabai is not only the mother of deceased but also the wife of present applicant and, therefore, she cannot be branded as interested witness at this stage. When the above-said evidence has been led, it can be certainly said that there appears to be *prima facie* evidence against the present applicant, so also he was not on bail throughout the trial and, therefore, we do not find this to be a fit case where the sentence should be suspended. Hence, the application stands rejected.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm