

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2178 OF 2022
IN
CRIMINAL APPEAL NO.879 OF 2022

Mangesh S/o Sudam Vaywal,
Age : 31 years, Occu. Education,
R/o. Samsapur, Tq. & Dist. Parbhani

... Applicant
(Orig. Accused)

Versus

1. State of Maharashtra,
Through Police Station Begampura,
Tq. & Dist. Aurangabad.
2. Shatrughan S/o Shankar Tidke,
Age : 50 Years, Occu. : Labour,
R/o. At Post Shahapur,
Tq. Khamgaon, Dist. Buldhana.

... Respondents.

...
Mr. Yogesh G. Birajdar a/w Mr. Suyash S. Jangada h/f. Mr. Sachin S.
Deshmukh, Advocate for Applicant

Mr. S. J. Salgare, APP for Respondent - State

Ms. Anita A. Ghanekar, Advocate for Respondent No.2 (Appointed)

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

RESERVED ON : 01 AUGUST , 2023
PRONOUNCED ON : 11 AUGUST, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Original convict, for offence under section 302 of Indian Penal Code (IPC) has put up instant application with prayers for suspension of sentence and grant of bail.

2. It is submitted that, applicant was arrested and tried for commission of offence under section 302 of IPC, vide Sessions Case No. 176 of 2018 by learned Additional Sessions Judge, Aurangabad and vide Judgment and order dated 07.04.2022 held guilty and sentenced to suffer imprisonment for life against which Criminal Appeal No. 879 of 2022 has been filed and the same is pending before this Court.

3. Learned counsel for applicant would submit that, it is apparently false implication, i.e. in absence of cogent, reliable and trustworthy evidence. It is pointed out that, case of prosecution is based on circumstantial evidence, but none of the circumstances are proved beyond reasonable doubt. He introduced the role of witnesses adduced by prosecution and also took us through their testimonies. According to him, cross-examination of above witnesses apparently renders their testimonies unworthy of credence, however, learned trial Judge has accepted their version and had written guilt. He emphasized that, death of Ajay is reported to be by ligature strangulation. It is submitted that, applicant was not residing with deceased, rather he was residing with other boys and sharing same room with them. Applicant is arrested on the basis of alleged extra judicial confession, which has no evidentiary value. Lastly he submitted that, he has a strong

case in appeal. That, appeal is admitted recently and it will take long time for its hearing, and hence, till then he prays for suspension of sentence and grant of bail.

4. With able assistance of learned counsel for applicant, we have *prima facie* gone through the evidence before the trial Court. Admittedly, there is no direct evidence. In short, case of prosecution is that accused was friend of deceased Ajay. Appellant was having one sided love with a girl, with whom deceased had allegedly befriended. According to prosecution, there was annoyance on such count and appellant went to stay in the room of deceased and had spent night with him. According to prosecution, original roommates, namely Sachin and Anil had seen appellant in their room of deceased and according to them he had requested them to sleep in other room as he had something personal talk with deceased, and therefore, both these boys went in room no.11 to sleep that night. According to PW5 Ganesh, who was occupant of room no.10, which is adjoining to the room which is scene of occurrence, around 5:15 p.m., accused came out of room no.11 and informed that he has finished deceased and that he is going to police station. Anil and Sachin also claim about such extra judicial confession made to them.

5. It is seen that, appellant himself had been to the police station. During investigation, there is said to be recovery of waist belt. Death is reported to be due to ligature strangulation. No doubt, case of prosecution is based on so called extra judicial confession, however there is no dispute that appellant had spent night with deceased, during which incident allegedly took place. There are as many as three friends of deceased, who were in the adjoining rooms and they all confirmed about visit of appellant to the room of deceased and only he to be in the company of deceased that night.

6. Record shows that, appellant was not on bail during trial. Taking into account above material on record, *prima facie*, we are convinced that there is no case made out for suspension of sentence or grant of bail. Hence, application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)