

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

908 CRIMINAL APPLICATION NO.2388 OF 2022
IN APPEAL/542/2022

BADRI NARAYAN KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Advocate for Applicant : Mr.Nade Subhash S. and
Mr.Sandanshiv M.B.
APP for Respondent No.1 : Ms.V.S.Choudhary
Advocate for Respondent No.2 : Mr. R.D.Biradar

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

DATE : 3rd February, 2023

PER COURT :-

. Present application has been filed for suspension of substantive sentence.

2. Present applicant is original accused No.1 who has faced the trial in Sessions Case No.122 of 2016 before learned Additional Sessions Judge-2, Parbhani. Vide judgment and order dated 07-07-2022, he has been held guilty for committing offence under Sections 302 of Indian Penal Code. He has sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default of payment, to suffer simple imprisonment for two months. It will not be out of place to mention here that

the learned trial Judge has acquitted present applicant as well as co-accused accused No.3 Sulabai Narayan Kamble from the offence punishable under Sections 498A, 323, 504 read with Section 34 of the IPC. Accused No.3 Sulabai has also been acquitted from the offence punishable under Section 302 read with Section 34 of the IPC.

3. Heard learned Advocate for the applicant and learned APP for respondent No.1-State.

4. The case appears to be based on two dying declarations; one of which is recorded by Police Head Constable on duty at Civil Hospital and it was treated as FIR. Initially the FIR was registered for the offence under Sections 307, 498A, 323 read with Section 34 of Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act. The incident took place on 13-06-2016. The first dying declaration is stated to have been taken at around 02:10 p.m. and the second dying declaration at around 04:00 p.m. has been recorded by Naib Tahasildar. Deceased expired on 19-06-2016 and as per the post mortem report, the probable cause of death is "Terminal cardio-respiratory failure due to septicemia due to 41% mixed burn injuries". Prosecution has examination in all seven witnesses to

bring home the guilt of the accused and defence has examined two witnesses. As aforesaid, the present applicant who is husband of deceased has been held guilty of committing offence under Section 302 of IPC and he has been acquitted for rest of the offences. As per both the dying declarations, the motive appears to be the questioning why the deceased slept in the courtyard at the night time i.e. intervening night of 12-06-2016 and 13-06-2016 and then the second ground is stated to be that there was illegal demand of Rs.40,000/- for the construction of W.C. and Bathroom.

5. At this *prima-facie* stage also we would like to observe that those two reasons were also the reasons for the offence under Section 498A of IPC but the learned trial Judge has acquitted the applicant from that offence. Therefore, the question that involve would be what was the motive. Another fact which has to be gone into is that the marriage between the applicant and deceased took place on 27-05-2016. PW4 Ashroba is the father of the deceased and in his examination-in-chief he has stated that after 2-3 days of cohabitation immediately after the marriage, the deceased had come to stay at her parental house. She was taken back after 2-3 days thereafter to the matrimonial home and again after 2-3 days in between, the mother of the

deceased had brought the daughter to stay with them and had left her to the matrimonial home on 12-06-2016. It appears that the mother of the deceased has not been examined by the prosecution and the incident had taken place on 13-06-2016. Therefore, taking into consideration the duration of the marital life, it will have to be reassessed as to whether such bond was developed between the husband and wife so as to go the things to such an extent that the applicant would be think of committing murder for non-fulfillment of the alleged illegal demand of Rs.40,000/- We do not want to consider the defence that was taken by the applicant at the stage but suffice it to say that case is made out for reassessment of evidence. The applicant was on bail throughout the trial and therefore, the sentence needs to be suspended till the hearing and final disposal of the criminal appeal. Hence, following order :

ORDER

- i) Application stands allowed and disposed of.
- ii) The substantive sentence imposed against the applicant accused No.1 – Badri Narayan Kamble in Sessions Case No.122 of 2016 by learned Additional Sessions Judge-2, Parbhani on 07-07-2022 stands suspended till the hearing and disposal of Criminal Appeal No.542 of 2022.

iii) The applicant Badri Narayan Kamble be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- 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 he tender bail papers and thereafter, the trial Judge to fix dates for his subsequent appearance.

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**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE