

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2321 OF 2023
IN
CRIMINAL APPEAL NO. 571 OF 2023

Ajinkya S/o. Shivnath Memane,
Age : 23 years, Occu. : Nil,
R/o. : Bhoyegaon, Tal. Chandvad,
District : Nasik, at present,
Plot No. 08, Rajhans Colony,
Chitod Road, Dhule,
District, Dhule.

... Applicant.

Versus

1. The State of Maharashtra,
Through the Dhule City Police Station,
Dhule, Taluka and District Dhule,
2. Pramila Ramesh Shrirao,
Age : 57 years, Occ. Teacher,
R/o. Plot No. 08, Rajhans Colony,
Chitod Road, Dhule,
District Dhule.

... Respondents.

...
Mr. Rajendrraa Deshmukh, Senior Counsel i/b. Mr. Devang Deshmukh,
Advocate for Applicant/Appellant.

Mr. A. V. Deshmukh, APP for Respondent No.1 - State.

Mr. Amol S. Sawant and Mr. H. V. Tungar, Advocates for Respondent No.2.

...

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

RESERVED ON : 03 AUGUST, 2023

PRONOUNCED ON : 11 AUGUST, 2023

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

1. Original convict, for offence under section 302 and 324
of Indian Penal Code (IPC) has put up instant application with

prayers for suspension of sentence and grant of bail.

2. Record shows that, on trial, learned Additional Sessions Judge, Dhule convicted applicant vide judgment and order dated 28.04.2023 for offence under sections 302 and 324 of IPC, and thereby he is sentenced to suffer imprisonment for life and to pay fine and in default, to suffer rigorous imprisonment.

3. Learned Senior Counsel, pressing for relief of suspension and bail, would submit that case of prosecution was not proved beyond reasonable doubt. According to him, apart from failure to prove motive, there was no incriminating material to implicate, charge and convict applicant for murder of informant's husband. He would submit that, informant's version and evidence itself shows that applicant was son of her tenant. That, she herself spoke about applicant going for a walk and undertaking physical exercise daily with deceased, and therefore, it is submitted that it is clear that relations were cordial and not at all strained.

4. He further pointed out that, applicant's implication is apparently on suspicion. That, it is on the basis of uncorroborated version of informant. That, unfortunately learned trial court also relied on the sniffer dog evidence to record guilt. He pointed out

that even there is delay in lodging FIR and arresting applicant. It is submitted that, alleged occurrence has taken place in the early hours of morning and that too in thickly populated locality, but no one had seen applicant fleeing. It is pointed out that, deceased was found lying in injured condition by a neighbor, namely Sanjay Pakhle. Lastly, it is submitted that, applicant/appellant has a strong case in appeal, however as much more time would be required for appeal to be heard, it is prayed that, sentence be suspended and bail be granted to the applicant.

5. We have gone through the record and papers placed before us. It is emerging that, deceased Ramesh and informant are husband and wife. It seems that they had let out premises to father of applicant in the capacity of tenant. Evidence of informant shows that applicant used to accompany her husband for morning walks and for exercise of yoga, which was said to be done on the terrace of the building. FIR shows that, on relevant day, she does not speak of applicant accompanying her husband for walks, however, she claims to have seen him going with her husband on terrace. According to her, around 6:10 a.m., she was attacked by applicant while she was working in the kitchen and she claims to have managed to escape and raise hue and cry and claims to have informed neighbors about she being attacked by applicant. She has

alleged assault on her husband by applicant. The person who went on the terrace at the request of informant is also examined as PW11 Sanjay. But, in his substantive evidence, he merely speaks about waking up on hearing shouts of informant and claims that he was requested by her to go and see on the terrace and about son of Nemanee carrying out the assault. No other immediate neighbour seems to have been examined. FIR seems to be recorded around 5.45 p.m. regarding incident which allegedly took place around 6:00 a.m.. Apparently, motive is not established. It seems that only on the testimony of PW1 Pramila informant and sniffer dog evidence, learned trial court seems to have accepted the case of prosecution. It has been brought to our notice that informant herself had removed piece of pipe which was inserted in the head of deceased. Investigating Officer has admitted that he did not collect her fingerprints. Taking into account the above material, and as appeal is already admitted, in our considered opinion, application deserves to be allowed and we proceed to pass following order :-

ORDER

- i) Application stands allowed and disposed of.
- ii) The substantive sentence imposed against the applicant - Ajinkya S/o Shivnath Memane in Sessions Case No.150 of 2021 by learned Additional Sessions

Judge, Dhule, on 28.04.2023 stands suspended till the hearing and disposal of Criminal Appeal No.571 of 2023.

iii) The applicant Ajinkya S/o Shivnath Memane be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/-.

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 they tender bail papers and thereafter, the trial Judge to fix dates for their 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, J.)

(SMT. VIBHA KANKANWADI, J.)