

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

**CRIMINAL APPLICATION NO. 2570 OF 2023
IN
CRIMINAL APPEAL NO.675 OF 2023**

Datta S/o. Baburao Bhutekar,
Age : 45 years, Occu. : Prisoner,
R/o. Navha, Tq. & Dist. Jalna.
At present R/o. Central Prison Harsul,
Aurangabad.

... Applicant.
(Orig. Accused no.1)

Versus

The State of Maharashtra,
Through Taluka Police Station, Jalna
Tq. & Dist. Jalna.

... Respondent
(Orig. Informant)

...

Mr. Vishnu M. Jaware, Advocate for Applicant (Appointed through
Legal Aid Committee)

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

...

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

DATED : 17 AUGUST, 2023

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

1. Vide instant application, original accused no.1 - convict
has put up following prayers :-

“(A) The application may kindly be allowed.

(B) The conviction and sentence imposed on the applicant in
Sessions Case No.153/2008 dated 25.10.2010 for offence punishable
u/sec. 302 of I.P.C. by the Ld. Extra Joint Adhoc Additional Sessions
Judge Jalna, vide judgment and order dated 25.10.2010 may kindly be
suspended and the applicant may kindly be enlarged on bail, during
pending hearing and final disposal of the appeal.

(C) The applicant being in jail, his affidavit and court fees may kindly be dispensed with.

(D) Any other suitable and equitable reliefs may kindly be granted in favour of the applicant.”

2. Learned counsel for the applicant submitted that there is apparently false implication and rather on mere suspicion. Briefing us about the prosecution case in trial court, it is submitted that, there are allegations of maltreatment for not bringing amount and for not bearing child. It is submitted that applicant and his parents as well as brother were roped in, it is pointed out that, however, they are acquitted and only applicant is convicted. It is emphasized that there is no direct evidence and case is based on circumstantial evidence. That, in fact prosecution failed to prove case beyond reasonable doubt. It is submitted that, in fact, applicant had also suffered injuries and was unconscious. Thus, it is submitted that, learned trial Court failed to consider and appreciate the same and had merely convicted applicant by invoking section 106 of Evidence Act by holding that deceased was in his custody. It is further pointed out that, no independent witness has been examined. That, the applicant has very strong case in appeal, which is already preferred by him. However, applicant is behind the bar since fourteen years and as much more time would be required for hearing the appeal, above prayers are raised.

3. While opposing the relief, learned APP pointed out that, accused - applicant had committed murder of his wife Kalinda by stabbing her with knife that is on the night when she was with him. False plea and defence have been raised, however, he being custodian of his wife, learned trial court has rightly held him guilty and as there is no case made out for grant of bail or suspension, it is prayed that, the application be rejected.

4. On hearing above submissions, we have perused the record. It is emerging that as many as 7 witnesses were examined by prosecution. FIR seems to be at the instance of brother of deceased. On going through his evidence, it is seen that after initial five years, there was said to be ill-treatment on two counts, *firstly*, for not bearing child and *secondly* for not complying with demand of money for digging and construction of well. Evidence of brother shows that, immediately prior to occurrence in question, on account of ill-treatment, deceased was taken to her parent's house and there applicant allegedly went to bring her back, but on her refusal, it is alleged that he attacked her with knife, but was saved due to intervention by her family members. His evidence also shows that, on assurance of accused no.2, deceased was sent to cohabit with applicant. On the fateful night deceased suffered

stab injuries and is reported to have succumbed to the same. There is no *plea of alibi*. Learned trial Judge seems to have accepted the prosecution version primarily, holding that applicant being husband and being custodian of wife ought to have offered explanation for the fatal injuries suffered by his wife while she was in the house. C.A. analysis seems to be supporting prosecution.

In our opinion, taking into account the nature of accusations and the evidence on record, no case or ground is made out for suspension of sentence or grant of bail. Hence, application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)