



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

**CRIMINAL APPLICATION NO.2866 OF 2023
IN APPEAL/693/2023 WITH APPEAL/693/2023**

. Maruti @ Wagh Shankar Vhanale
Age: 25 years, Occu.: Agriculture,
R/o. Gugalgaon, Tq.Omerga,
Dist.Osmanabad. ..Applicant

Versus

1. The State of Maharashtra
2. Rajendra s/o Shrimant Amashety
Age: Major, Occu.: Agriculture,
R/o. Gugalgaon, Tq.Omerga,
Dist.Osmanabad.
3. Vidyabai Shrimant Amashety
Age: Major, Occu.: Agriculture,
R/o. Gugalgaon, Tq.Omerga,
Dist.Osmanabad. ..Respondents

...

Advocate for Applicant : Mr.Nilesh S. Ghanekar
APP for Respondent no.1 : Mr.S.D.Ghayal
Advocate for Respondent nos.2 & 3 : Mr. Dhananjay S. Patil
(appointed)

...

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

DATE : 10 NOVEMBER, 2023

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

1. Applicant convict for charge under Sections 302 and 341 of the Indian Penal Code (IPC) is hereby seeking suspension of sentence

awarded by the learned Additional Sessions Judge, Omerga and is also seeking enlargement on bail by invoking Section 389 of the Code of Criminal Procedure (Cr.P.C.).

2. Learned Counsel for applicant would submit that applicant was charged and tried on accusation of committing murder of one Shrimant Rajendra Amashety in alleged occurrence dtd. 15-02-2018. Allegations were made that suspecting affair between cousin sister of accused and deceased, assault was carried out. What exactly preceded the occurrence has not come on record. There are allegation of assault by use of hunter. Incident had taken place at around 11:30 p.m. and source of light was said to be a torch. That Medical Expert has not opined death to be homicidal one. Moreover, applicant was on bail during the trial and as much more time would be required to hear and decide the appeal, it is prayed that relief of suspension and bail be granted.

3. Above application is strongly opposed by learned APP on the ground that applicant is named and identified by informant. Motive has come on record. There is direct evidence. Offence being grave, applicant does not deserve relief as prayed.

4. Learned Counsel for victim also opposed application by adopting the submissions advanced by learned APP.

5. We have considered the above submissions. It seems that present applicant and three others were made to face trial on being chargesheeted by Omerga Police Station for commission of offence under Sections 302, 341 read with 34 of the IPC. Going by the FIR, it is emerging that while informant, deceased and PW3 Virbhadra were travelling on a Motorcycle, they were intercepted by four men. Informant has named present applicant also alongwith another, but two others are not identified. There are allegation of flogging by hunter. Deceased was taken to hospital and was reported to be dead.

6. As pointed out, evidence of PW5 Dr.Dhani is silent about which of the injury to be sufficient in the ordinary course of nature to cause death and even opinion is not issued that death is homicidal. Learned APP did not refute submission that applicant was on bail during the trial. Taking the year of the appeal into consideration, nature of allegations and quality of evidence, *prima facie* we are of the opinion that relief as sought deserves to be granted. Hence, we proceed to pass following order :

ORDER

- I. The application stands allowed.
- II. The substantive sentence imposed on the applicant Maruti @ Wagh Shankar Vhanale in Sessions Case No.14 of 2018 by learned Additional Sessions Judge, Omerga on 10-07-2023 stands suspended till final hearing and disposal of Criminal Appeal No.693 of 2023.
- III. The applicant Maruti @ Wagh Shankar Vhanale be released on P.R.Bond of Rs.30,000/- (Rupees thirty thousand only) with two solvent sureties of Rs.15,000/- (Rupees fifteen thousand only) 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 tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.
- 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.

VIII. Fees of the learned Counsel appointed to represent respondent nos.2 and 3 is quantified at Rs.5,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(**ABHAY S. WAGHWASE**)
JUDGE

(**SMT. VIBHA KANKANWADI**)
JUDGE

SPT