



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

**CRIMINAL APPLICATION NO.2896 OF 2023
IN APPEAL/707/2023**

**NAVNATH @ NAVYA SHAMRAO JAGDHANE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr.Chaitanya Chandrakant Deshpande
Additional Public Prosecutor for Respondent : Mr.S.D.Ghayal

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

DATE : 6 DECEMBER, 2023

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

1. Original accused no.1 has invoked provisions under Section 389 of the Code of Criminal Procedure (Cr.PC.) praying to suspend sentence and to grant him bail pending appeal arising out of judgment and order dated 16-06-2023 passed by the learned Additional Sessions Judge, Ambad, District Jalna in Sessions Case No.2 of 2022.

2. Learned Counsel for the applicant pointed out that applicant was chargesheeted by Ambad Police Station for commission of offence under Section 302 and 120-B of the Indian Penal Code (IPC). He pointed out that in support of its case, prosecution has examined as many as 21 witnesses and that prosecution came with a case that there was love affair between accused no.1 and accused no.3. That case is set up that son of accused no.3 had

become a hurdle and therefore, to remove such impediment, it is alleged that by hatching conspiracy, accused nos.1 and 3 have committed murder. However, according to learned Counsel, there was no independent, reliable or trustworthy evidence to show that accused nos.1 and 3 had in fact hatched conspiracy. That motive has not been clearly and cogently established by prosecution. That case was based on circumstantial evidence, but none of the circumstances were cogently proved. The chain of circumstances has not been completed, but still the learned trial Judge has accepted the case of prosecution and convicted applicant. That judgment, being based on improper appreciation, has been questioned by filing Criminal Appeal No.707 of 2023. That there is bright chance of his succeeding in appeal, however, appeal being of 2023, it will take long time for hearing and so till then, he prays for suspension of sentence and grant of bail

3. Per contra, learned APP pointed out that in the trial Court, prosecution has proved all circumstances beyond reasonable doubt. Motive has also been established. Small child has been done to death as he was considered as impediment in the illicit relations. Medical evidence and other circumstances including recovery clearly prove the guilt of applicant and therefore, on such count, application for suspension of sentence and grant of bail be rejected.

4. In the light of above submissions, we have gone through the record

before us. Here we are now only called upon to ascertain whether it is a fit case at all for suspension of sentence and grant of bail by exercising powers under Section 389 of the Cr.P.C. There are certain parameters and factors which are required to be borne in mind like probability of appeal being allowed etc. Law to that extent is spelt out in the case of ***Laxman Malhari Sable v. State of Maharashtra; 1997 (2) Mh.L.J. 780.***

5. Keeping the same in mind, we have taken a brief survey of prosecution evidence in the trial Court. It seems that, after hearing both the sides, present applicant is arrayed as main accused and tried by learned Additional Sessions Judge, Ambad for charges under Sections 302 and 120-B of the IPC. Sum and substance of prosecution case is that accused nos.1 and 3 had affair and son of accused no.3, aged 6 years, had become a hurdle and therefore, they both took the child and he was killed and accused no.3 foisted a case about her child being taken and done to death by an unknown person. It seems that prosecution has examined as many as 21 witnesses. Admittedly case is based on circumstantial evidence. PW1 Dr.Subodh Pundlik Ingle, who conducted autopsy, has attributed death of child namely Aaditya due to “Hypovolemic and neurogenic shock due to head injury and neck injury”.

6. On *prima facie* going through the evidence on record, it seems that evidence of PW3 Ratnamala Chandramani Ughade, sister-in-law of accused

no.3, PW4 Vinod Bhaurao Ughade, very husband of accused no.3 and PW18 Niraj Dipakrao Solanke, Computer expert is relied by the prosecution in the trial Court. Even testimony of independent witness has been accepted by the trial Court. There is recovery of knife at the instance of accused no.1. PW1 Dr.Ingle, Autopsy Doctor has confirmed injuries to be possible by knife. Therefore, hear knife is recovered from a place, which was to the exclusive knowledge of accused no.1. Forensic evidence also confirms involvement of applicant. Offence is grave. Child of 6 years is done to death. Learned Counsel for the applicant, on Court query, admits that applicant was not on bail during the trial.

7. Taking all above circumstances into consideration, we do not consider it a fit case for grant of relief of suspension of sentence as well as bail.

ORDER

Criminal Application No.2896 of 2023 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT