

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2874 OF 2019
IN APEAL/1267 OF 2019

Abhang s/o Banshi Waghmare
Age: 32 years, Occu.: Driver,
R/o. Nandura (Bk.), Tq. Ahmedpur,
Dist. Latur

.. Appellant

Versus

The State of Maharashtra
Through : Officer in charge
Ahmedpur Police Station,
Ahmedpur, Dist. Latur.

.. Respondent

...

Mr. R. H. Bhapkar, Advocate for appellant (Appointed through Legal Aid).
Mr. A. M. Phule, APP for the respondent - State.

...

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

RESERVED ON : January 24, 2023.

PRONOUNCED ON : February 20, 2023.

ORDER :-

. Present application has been filed for suspension of sentence by original accused No.1, who has been convicted by learned Additional Sessions Judge, Ahmedpur, Dist. Latur in Sessions Case No.28 of 2014 on 19.06.2017. The applicant - accused No.1 has been sentenced thus :-

"1. The appellant - accused No.1 has been convicted for the offence punishable under Section 120-B of the Indian Penal Code and thereby sentenced to suffer imprisonment for life and to pay a fine of Rs.20,000/- and in default to undergo rigorous imprisonment for one year.

2. The appellant - accused No.1 further convicted for the offence punishable under Section 302 read with Section 120-B of Indian Penal Code and thereby sentenced to suffer imprisonment for life and to pay a fine of Rs.25,000/-, in default to undergo rigorous imprisonment for one year.

3. The appellant - accused No.1 further convicted for the offence punishable under Section 201 read with Section 34 of Indian Penal Code and thereby sentenced to suffer five years rigorous imprisonment and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year."

2. Heard learned Advocate Mr. R. H. Bhapkar for the applicant and learned Advocate Mr. A. M. Phule for the respondent - State.

3. It is to be noted that the present appellant - applicant is in jail since 29.04.2014 and as per the impugned judgment and order he was in jail till 16.01.2017 of which period he has been given set off under Section 428 of the Code of Criminal Procedure.

4. The another point that is required to be considered is co-accused. Accused No.2 has been granted bail and suspension of sentence by this Court by order dated 21.12.2022.

5. The case is based on circumstantial evidence. Perusal of the record would show that initially the brother of the deceased had given a missing report on 27.04.2014 stating that his brother is missing since 25.04.2014. Thereafter, it appears that on the same day, the FIR vide Crime No.87 of 2014 came to be registered on the basis of the information given by the brother under Sections 364, 120-B of Indian Penal Code. At that time, the said FIR was against the present appellant as well as co-accused, but Section 302 was not added. Further, it appears that the dead body was found within the jurisdiction of Pimpaldari Police Station, Tq. Gangakhed. It was then stated that after the postmortem, the dead body was buried in the cemetery in Rani Sawargaon. The dead body was excavated and it was then identified as that of Eknath. The prosecution has examined in all 20 witnesses to bring home the guilt of the accused. However, the evidence is mainly in the nature of discovery panchanama, past conduct of the accused and the deceased, autopsy doctor and investigating officers. Therefore, it would be required to be seen as to whether all of them complete the chain of circumstances. It is also now required to be seen, since the appeals are admitted, as to

whether the evidence that has been led by the prosecution was beyond reasonable doubt or not. It appears that the case is based on circumstantial evidence and most of the disclosures appear to be by accused No.2. Under such circumstance, whether her discovery of certain facts can bind the present appellant would be a question. We are, therefore, inclined to allow the application, as the matter is of 2019 and we are dealing with jail appeals of 2015, at this stage. It would take long time to take up the appeal for hearing. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The sentence imposed on the applicant/appellant in Sessions Case No.28 of 2014 by learned Additional Sessions Judge, Ahmedpur, is hereby suspended till the hearing and final disposal of Criminal Appeal No.1267 of 2019.
- III) The applicant/appellant - Abhang s/o Banshi Waghmare be released on P.R. Bond of Rs.30,000/- with two solvent surety of Rs.15,000/- each.
- IV) The applicant/appellant shall not commit any criminal activity.

V) The applicant/appellant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting 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 applicant/appellant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant/appellant.

VII) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm