



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 3391 OF 2022
IN APEAL/216/2023**

Amrut S/o. Babu Gavit,
Age : 44 years, Occu. : Labourer,
R/o. Lakkadkot, Vadfali, Tq. Navapur,
Dist. Nandurbar.
(At present in Jail)

... Applicant.
(Orig. Accused)

Versus

The State of Maharashtra,
Through the Police Station Officer,
Navapur Police Station, Tal. Navapur,
Dist. Nandurbar.

... Respondent.

...
Advocate for Applicant : Mr. Suresh P. Salgar
APP for Respondent – State : Mrs. V. S. Choudhari
...

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

DATED : 20th OCTOBER, 2023

PER COURT :

1. Present application has been filed for suspension of substantive sentence. The appellant/applicant is the original accused in Sessions Case No.40 of 2020, who has been convicted for the offence punishable under section 302 of Indian Penal Code (IPC) by the learned Additional Sessions Judge, Nandurbar on 04.01.2022.

2. Heard learned Advocate Mr. Salgar for applicant/ Appellant and learned APP Mrs. Choudhari for State.

3. Learned Advocate appearing for the applicant has taken us through the prosecution story and submits that, accused has been falsely implicated in the crime as it is apparent from the fact that FIR came to be registered at 23:55 hours on 30.03.2020, whereas, the investigation had begun prior to the registration of the offence. He places reliance on the decision of the Hon'ble Supreme Court in the case of ***Samaj Parivartan Samudaya and Ors. v. State of Karnataka & Ors.*** in Writ Petition (Civil) No.562 of 2009, wherein it is held that investigation would begin only after registration of the offence. He also submits that arrest of the accused has been wrongly shown. He also raises doubts over the veracity of the alleged eye witnesses. False implication was on the count of some previous dispute. He submits that there is every hope of success to the appellant in the appeal and therefore, this is a fit case where the appellant should be released on bail.

4. Learned APP as well as learned Advocate for respondent no.2 strongly opposed the application and supported the reasons given by the learned trial Judge for convicting the

appellant for committing offence punishable under section 302 of IPC.

5. At the outset, it is to be noted that, accused was never on bail throughout the trial and now, when the evidence is adduced to bring home his guilt, the prosecution story that accused committed murder of one Subhash by axe is supported by PW2 Suwarta, PW3 Manish, PW4 Vilas. Of course, entire evidence would be scanned and scrutinized at the time of final hearing, but this is the evidence that was assessed by the learned trial Judge. There is direct evidence of these witnesses and the medial evidence by PW7 Dr. Shashi Kumar, who conducted autopsy, had noted 9 external injuries and had given cause of death of Subhash to be "head injury due to sharp and hard instruments".

6. Points those have been raised by the learned Advocate for the applicant can be well appreciated at the time of final hearing and therefore, this is not a fit case where the applicant should be released on bail by suspending the sentence.

7. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)