

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

**910 CRIMINAL APPLICATION NO.3341 OF 2023
IN
CRIMINAL APPEAL NO.576 OF 2023**

RITESH ABHAY NADE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.B. Garud, Advocate for applicant

Mr. A.M. Phule, APP for respondent

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

DATE : 13th OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for suspension of sentence. Appellant/applicant is original accused in Sessions Case No.295/2014. He has been convicted for the offence punishable under Section 302 and 377 of the Indian Penal Code on 12.03.2018 by learned Additional Sessions Judge, Aurangabad. He has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default to suffer rigorous imprisonment for one year for having committed an offence

punishable under Section 302 of the Indian Penal Code. He has also been sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer rigorous imprisonment for one year for committing an offence punishable under Section 377 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2 Heard learned Advocate Mr. V.B. Garud for the applicant/appellant and learned APP Mr. A.M. Phule for the respondent.

3 The learned Advocate for the applicant has taken us through the material which was before the learned trial Judge and submitted that there was no evidence to support the case of the prosecution which could be said to be beyond reasonable doubt. The accused was residing as tenant in the house of informant. Why the tenant would commit such offence on the son of landlady. It also appears that the evidence has been created just to implicate the appellant. There was no circumstance or evidence showing that the deceased was in the company with the accused just prior to the alleged murder. The evidence of minor witness is appeared to be tutored. The inadmissible evidence has also been considered by the learned trial Judge. The learned trial Judge has erroneously invoked Section 106 of the Indian

Evidence Act and, therefore, wrongly convicted the appellant. The appellant has every hope of success in his appeal. Therefore, the sentence needs to be suspended.

4 Per contra, the learned APP supported the reasons given by the learned trial Judge and submitted that the body of deceased was found wrapped in bundle of clothes in the house of appellant and, therefore, it was his bounden duty to explain under Section 106 of the Indian Evidence Act as to how the said body was found in his house.

5 Here, perusal of the entire evidence would show that the informant lodged a missing report and then police had come, they took search of the house of the informant and then went to search the house of accused, who is the adjacent tenant of the informant. During that search they found one rolled bundle of clothes on the East side of Southern wall. After opening the said bundle, son of the informant was found in the same in unconscious state. The Investigating Officer immediately took him to GHATI, Aurangabad, however, he was declared dead. Panchas have been examined to prove the said panchnama. It appears from the medical evidence that cause of death of the deceased is smothering. The evidence of PW 5 Dr. Manoj Patekar, the autopsy Doctor, would show that there was suggestive of

unnatural sexual offence. Police had seized chit from the house of accused, so also, he had produced one more chit. It was sent for handwriting expert's opinion and it is opined by the expert that it is in the nature of written confession. Therefore, prima facie there is material against the accused and, therefore, this is not a fit case where he should be released on bail suspending the sentence. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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