

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

**CRIMINAL APPLICATION NO. 3700 OF 2022
IN
CRIMINAL APPEAL NO. 671 OF 2022**

Mohansing Mahavirsing Gaherwar,
Age : 51 Years, Occupation : Agril. & Service,
R/o. Madaj, Tq. Omerga,
Dist. Osmanabad.

... Applicant.
[Original Accused]

Versus

The State of Maharashtra

... Respondent

...
Mr. Sudarshan J. Salunke, Advocate for Applicant/Appellant.
Mr. R. D. Sanap, APP for Respondent – State.

...

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

DATE : 25th JANUARY 2023.

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

1. The convict in Sessions Case No.01 of 2019 has put up prayers for suspension of sentence and also to grant him bail during pendency of appeal, which arises out of judgment and order of conviction under section 302 and 498(A) of Indian Penal Code passed by learned Additional Sessions Judge at Omerga, Dist. Osmanabad.

2. Learned counsel for applicant would submit that there is

erroneous appreciation of evidence by the learned trial Judge. That, applicant-accused faced trial on accusation that on 02.10.2018, he strangled his wife while under influence of liquor. He pointed out that in fact applicant-accused was not present in the house at the relevant time as he had lost his father that same day and was busy in attending and conducting the last rituals of his father. Learned counsel pointed out that brother of deceased Anusaya had set law into motion alleging addiction of liquor of the applicant and under its influence, abusing and assaulting deceased Anusaya for non fulfillment of unlawful demands. There are allegations that applicant-accused intended to dispose of agricultural land to his own sister Sarla, so as to meet educational expenses of his own son who was put up with her and it is further allegation of prosecution that, deceased Anusaya had opposed the said idea and in that backdrop, it is alleged that, accused strangled his wife Anusaya.

3. Learned counsel strenuously submitted that at the threshold the case of prosecution about accused himself surrendering to police by visiting police station and informing about throttling his wife has no sanctity in the eyes of law and cannot be accepted. Secondly, no explanations were sought by putting any incriminating material and as such learned counsel submitted that applicant-accused is deprived of offering his explanation under section 313 of Cr.P.C. Learned counsel further submitted that evidence of prosecution is full of material omissions, contradictions, and therefore, when prosecution itself

had failed in establishing death of Anusaya to be homicidal one, learned trial Judge ought not to have recorded guilt of the accused. That, there was no direct evidence and rather case being based on circumstantial evidence, it was duty of prosecution to establish each circumstance strongly and cogently. However, despite of failure of prosecution to prove the same, case of prosecution has been accepted. Learned counsel lastly submitted that applicant has taken exception to the said judgment of conviction and he has a good case on merits. That, appeal will take a long time to be heard and decided and therefore he prays for suspension of sentence and to set the applicant at liberty by granting bail.

4. Learned APP strongly opposed above application on the ground that there was strong, ample evidence before the learned trial court. Motive has been established. Medical experts have confirmed the death to be homicidal one. Deceased was in company of accused and it is only he who has committed murder of his wife by strangulating her. That, considering seriousness of the crime and conviction being recorded, and moreover when accused was not on bail during trial, he has opposed the prayers for suspension of sentence as well as bail.

5. We have heard both sides. We have also gone through the record and papers before us. Here, there is no dispute that deceased Anusaya was wife of applicant-accused. On going through the record, it is emerging that

out of the wedlock they had a son and a girl, namely, Shivam and Sukanya. Prosecution seems to have come with a case that, applicant was keen in providing higher education to his son by keeping him with his sister Sarla. He intended to secure the expenses for education by selling land to his such sister Sarla with whom the son was staying and studying. Such intention of applicant was strongly opposed by deceased Anusaya. It seems that, 15 days prior to the alleged incident, there were quarrels between accused and deceased Anusaya on above issue. Prosecutions case is that one day prior to the incident, Anusaya called her sister-in-law Meena and had informed about quarrel, abusing, beating to her by accused and the incident seems to have taken place on next day, i.e. on 02.10.2018, in the very house where deceased was put up with applicant-accused. Dead body was found with strangulation marks.

6. Police machinery claims that accused himself appeared before the police and informed about act at his hands and thereafter verification was done by preliminary inquiry which revealed that deceased Anusaya has died due to strangulation and therefore law was set into motion.

7. The fundamental plea raised before us by the applicant is that, he was not present in the house and rather was busy in the last rituals of his father who had died the same day. Thus, it seems that plea of alibi has been pressed into service.

8. After going through the papers it is revealed that father of accused though expired on the same day, the death seems to have taken place in a house which is merely 300 to 400 ft. away from the house of accused. Therefore, that night accused was in the very close proximity of his own house where his wife was found dead. Attempt seems to have been made to examine evidence of sister Sarla in support of plea of alibi. However, she is the same sister to whom applicant – accused intended to enter into transaction of his own land. Therefore, taking into account all circumstances, learned trial court seems to have rejected the said plea as not proved. There is evidence on record suggesting series of quarrels preceding immediate to the occurrence. Admittedly, accused was not on bail during trial. Veracity of case of prosecution about the accused surrendering himself and confessing commission of crime could be tested at full-fledged hearing of the appeal.

9. Taking into consideration the nature of offence and the circumstances in which it was committed, we do not think it a fit case to grant the prayers i.e. suspending the sentence or granting bail as prayed by applicant. Hence, the criminal application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)