

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

**CRIMINAL APPLICATION NO. 3939 of 2022
IN
CRIMINAL APPEAL NO. 33 OF 2021**

Aslam S/o. Yakub Shaikh,
Age : 34 Years, Occu. Agri.,
R/o. Gulaj, Tq. Georai, Dist. Beed.
(Presently in Jail at Beed)

... Applicant/Appellant.
(Accused No.1)

Versus

The State of Maharashtra,
Through Chaklamba Police Station,
Tal. Georai, Dist. Beed.

... Respondent

. . .
Mr. Shaikh Tarek Mobin H., Advocate for Applicant/Appellant.
Mrs. P. V. Diggikar, APP for Respondent – State.

. . .

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

DATE : 8th FEBRUARY 2023.

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

1. Original convict is hereby invoking provisions under section 389 of the Code of Criminal Procedure, thereby praying to suspend the sentence passed by the learned Sessions Judge, Beed, by which he stood convicted for offence under section 302 of Indian Penal Code by judgment and order dated 15.12.2020 and at the same time he is also seeking his enlargement on bail till disposal of appeal.

2. It is submitted that applicant was tried by learned Sessions Judge, Beed for offence under sections 302, 498-A, 323, 506 read with section 34 of Indian Penal Code by virtue of registration of crime No. 235 of 2017. It is submitted that allegations were levelled that there was demand of Rs. 2,00,000/- by accused for construction of house and for non fulfillment of the same, it is alleged that there was ill treatment and harassment to deceased Samina. It is pointed out that accusations were made that Samina was done to death by throttling.

3. Learned counsel submitted that there is no trustworthy or cogent evidence on behalf of prosecution in support of their accusation of raising illegal demand or throttling deceased in that backdrop.

It is pointed out that there was no independent or reliable eye witness and only related or interested witness are examined. That, when there was no direct evidence, it was for prosecution to prove so called circumstances firmly and cogently but it failed to do so. That, learned trial court ought not to have drawn inference by invoking section 106 of Indian Evidence Act for convicting accused without prosecution discharging the burden of proving the case against appellant. According to learned counsel, there are several legal aspects which would be addressed at the time of appeal. As much more time

would be required for hearing and decision of the appeal, it is prayed that till then sentence awarded by trial court be suspended and appellant be granted bail.

5. While opposing the bail application, learned APP submitted that there is strong evidence regarding involvement of applicant. During entire trial he was not on bail. There is homicidal death got proved through medico legal experts evidence. That, accused had throttled his wife on failure to meet illegal demand. Therefore for all above reasons, it is submitted that relief as prayed may not be granted.

6. We have heard both sides. We have also gone through the evidence adduced by the prosecution in the trial court. It seems that to prove its case, prosecution has examined as many as 10 witnesses.

Homicidal death has been proved by prosecution in trial court by examining PW-5 Dr. Onkar Waghmare, who has narrated injuries noticed by him and its measurement in column no. 17 of PM. examination report, which are as under:

- (i) contusion on chin, 2X 2 c.m. on right inferior border of mandible, brownish black colour,
- (ii) contusion on inferior boarder of mandible, 1X 1 c.m., at mid-point of inferior border, brownish black colour,

- (iii) contusion below and behind right ear, 1.5 X 1.5 c.m., brownish black colour.
- (iv) contusion below and behind left ear, 2X 1.5 c.m., brownish black colour.
- (v) Scratch abrasion on central line of neck above level of thyroid cartilage obliquely transverse 0.5 c.m., in length.

Finally doctor seems to have opined that death was due to throttling.

7. Apart from above, it seems that informant is father and along with him brother, uncle, relatives as well as neighbour have been examined. *Prima facie*, they seem to be consistent on the point of demand and about death of Samina taking place in the house of accused with marks on neck and bleeding from nose. On the strength of available material, conviction seems to have been recorded.

8. From the judgment of trial court it seems that only present applicant is convicted for offence under section 302 of IPC only. He has been acquitted from the charge of section 498-A of IPC and in-laws i.e. his family members are acquitted from all charges. On going through the above discussed material, we are of the opinion that, accused is responsible for the throttling and committing murder of Samina. Admittedly, he was not on bail during trial. Therefore, in our considered opinion, in the light of available

material on record, we do not find it a fit case for grant of relief as prayed and hence we proceed to pass following order :-

ORDER

Criminal application is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)