

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

**CRIMINAL APPLICATION NO.4099 OF 2022
IN
CRIMINAL APPEAL NO.1092 OF 2019**

Gyandeo Vishnu Ghuge,
Age-33 years, Occupation:Nil,
R/o-Kaudgaon, Tq-Jintur,
District-Parbhani.

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Sudarshan J. Salunke Advocate for Applicant.
Mrs. P.V. Diggikar, A.P.P. for Respondent.
...

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

DATE : 18th JANUARY, 2023

ORDER :

1. Present application has been filed under Section 389 of the Code of Criminal Procedure for suspension of sentence. It will not be out of place to mention that this is a second application by the applicant. His earlier application, bearing Criminal Application No.616 of 2020, was rejected by this Court by order dated 3rd July 2020.

2. Heard learned Advocate Mr. Salunke appearing for the applicant and learned APP Mrs. Diggikar appearing for the respondent – State.

3. It has been submitted on behalf of the applicant – appellant that during the pandemic Covid-19, the applicant was released on emergency parole and he had surrendered before the jail authorities. Thereafter, on the date of the application the applicant was granted furlough leave. It has been further submitted that the applicant was arrested on 17th January 2016, faced the trial as under-trial prisoner. It will take further time for his appeal to be taken for final hearing. Under such circumstance, when the applicant is having high hopes that his appeal will be allowed, he deserves to be released on bail by suspending the sentence.

4. Learned APP strongly opposed the application and submitted that when this Court had rejected the earlier application by considering all the documents on record, the applicant does not deserve any sympathy. The prosecution story was that the appellant was harassing and ill-treating his wife by making illegal demand of Rs.5,00,000/-. The wife had informed

about the harassment to her parents and therefore, the parents of the wife had come to the matrimonial home of the daughter to convince that the appellant should behave properly with the wife. The appellant quarreled with the father-in-law and gave blow of wooden log on the head of his father-in-law, Janardhan. Janardhan collapsed and when the wife of the appellant and her mother were taking the injured to the ground floor by using staircase, even at that time the appellant has given kick to the deceased, as a result of which Janardhan fell down from the staircase sustaining more injuries. The incident had taken place at about 9.00 p.m. on 16th January 2016 but Janardhan succumbed to the injuries on 17th January 2016. The postmortem report reveals many injuries, which include the head injury caused by wooden log. It has caused fracture to the skull bone and there was a hemorrhage. The applicant – appellant has been convicted for the offence under Section 302 i.e. for causing murder of his father-in-law as well as under Section 498-A of the Indian Penal Code for subjecting his wife to cruelty. Therefore, no sympathy needs to be shown to the applicant.

5. At the outset, we would like to say that this Court, while rejecting the earlier application for suspension of sentence by order dated 3rd July 2020, had considered all the evidence that is

on record. Therefore, the second application is not maintainable. Merely because the applicant is in jail since 2016, it cannot be said that he should be released on bail. We, therefore, do not want to consider the submissions on the basis of merits of the case. So also in the present application it is only stated that as there is no possibility of early hearing of the appeal, the applicant is making the successive application. The points on the merits have not been stated in the application.

6. While making submissions, the learned Advocate for the appellant has tendered across the bar a photo copy of certificate of registration of marriage of the appellant. The same is taken on record and marked as "A" for identification purpose. Learned Advocate for the appellant has submitted that the appellant has performed marriage on 10th April 2022 at Kaudgaon Budruk and further submitted that now there is no member in the family of the applicant who would look after his wife and that was one of the ground he tried to canvass for suspension of sentence. In this connection, we are surprised to note that in the application there is absolutely no averment in respect of alleged marriage of the applicant – appellant on 10th April 2022. The present application has been filed on 2nd December 2022. PW-3 Swati is the wife of the applicant - appellant and it is stated that she got

married with the applicant on 19th February 2013. In her cross-examination there is no denial to this fact and taking into consideration her testimony the appellant has been convicted for subjecting PW-3 Swati to cruelty and the sentence has been imposed for the offence punishable under Section 498-A of the Indian Penal Code. As aforesaid, in the application there is no whisper that the applicant – appellant has given divorce to PW-3 Swati and then has performed marriage with another lady (at present we do not want to disclose the name of the lady in our order). Without legal dissolution of his earlier marriage the applicant could not have performed the marriage on 10th April 2022. Therefore, the said oral submission, which was the last attempt on behalf of the applicant, cannot be considered at all. This rather shows that when the applicant had come out of the jail on bail / parole, he has done such act which *prima facie* appears to be illegal and therefore, the applicant does not deserve any sympathy.

7. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE