



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 977 OF 2023
IN
CRIMINAL APPEAL NO. 245 OF 2023

Leena Nitin Padavale ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Nitin Gaware Patil i/b Mr. Umesh Mankapure, for the Applicant.

Mr. K.V.Saste, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 15th SEPTEMBER, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks suspension of her sentence and enlargement on bail, pending the hearing and final disposal of her appeal.
3. The applicant, vide Judgment and Order dated 24th

January 2023, passed by the learned Additional Sessions Judge, Kolhapur, in Sessions Case No. 09 of 2012, has been convicted alongwith other co-accused as under:

— For the offence punishable under section 302 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 201 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/- each.

— For the offence punishable under section 364 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 120-B read with 34 of the Indian Penal Code, to suffer rigorous imprisonment of two years and to pay fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 392 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for three months.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. According to the prosecution, the incident took place on 12th January 2011 at about 5.30 p.m. It is alleged that Nitin Padavale (deceased) returned home from his agricultural land and at about 6.30 p.m. again went out and thereafter, did not return home. Pursuant thereto, Nitin's brother - Ganesh lodged a missing complaint on 14th January 2011. It appears that on 21st January 2011, one police Patil informed the police about a dead body, lying near Waghzara, Kolhapur. The dead body was found lying in a valley at a depth of about 50 feet and was in a decomposed condition with no head attached to the body. Pursuant thereto, C.R. No. 7 of 2011 came to be registered with Shahuwadi Police Station, Kolhapur alleging offences punishable under sections 302, 201 of the Indian

Penal Code. During the course of investigation, applicant and other co-accused came to be arrested. According to the prosecution, the accused no. 1-Ravi Mane had a love affair with the applicant i.e. accused no. 7-Leena Padavale (wife of the deceased) and that accused no. 1-Ravi Mane in order to eliminate Nitin, hired accused nos. 5-Deelip Dudhale and accused no. 6- Amit Shinde to kill the deceased. It is alleged that pursuant thereto, a meeting was organized in a hotel on 12th January 2011, which was attended by accused nos. 1-Ravi Mane, 2-Vijay Shinde, 3-Kishor Mane, 5-Deelip Dudhale, 6-Amit Shinde and 9-Satish Vadar. It is the prosecution case that accused nos. 2 - Vijay Shinde, 3 - Kishor Mane, 4 - Aakash @ Akash Waghmare, 5 - Deelip Dudhale and 6 - Amit Shinde brought Nitin at Warnanagar Kodoli, Borpadale Phata, Bambawade, Malkapur Road to Waghzara jungle; and thereafter, accused nos. 2 - Vijay, 3 - Kishor, 5 - Deelip and 6 - Amit took Nitin to the said jungle; that accused nos. 2 - Vijay, 3 - Kishor and 5 - Deelip held Nitin by his leg and accused no. 6 held Nitin's head. It is alleged that accused no. 6-Amit Shinde severed Nitin's head from his body and killed him and thereafter, the body

was thrown in a valley. It is further the prosecution case, that when the aforesaid accused reached Amrut Nagari Phata, post the incident, accused no.1-Ravi came alongwith accused no. 11-Manesh Kuchkoravi (on accused no. 1's motor cycle), and that accused no. 6 - Amit showed Nitin's head to accused nos. 1-Ravi. Thereafter, Nitin's head and all his articles were disposed of, by throwing the same in Warna river.

5. As noted earlier, the prosecution case rests on circumstantial evidence. Learned Counsel for the applicant submits that merely because the applicant (wife of the deceased - Nitin) had illicit relations with accused No.1 – Ravi, no motive can be attributed to the applicant in the commission of the alleged offence. He submits that there is no motive on record as alleged by the prosecution to connect the applicant with the alleged offence. He submits that admittedly, the applicant was not present at Hotel Maharaja, even according to the prosecution, when the conspiracy was hatched by the accused No.1 with other co-accused, nor was she present when the deceased – Nitin was done to death. He further submits that the

prosecution has not brought on record the CDR's to show that the applicant was in touch with the accused at the relevant time and as such, in the absence of any evidence the applicant could not have been convicted.

6. Learned APP does not dispute the fact that the applicant was not present at the spot when the conspiracy was hatched, nor was she present at the spot, where deceased was done to death. He, however, submits that the applicant had motive to kill the deceased, inasmuch as, she is having an affair with accused No.1 – Ravi.

7. We have perused the evidence of P.W.13 - Ganesh (brother of deceased – Nitin). A perusal of the evidence of P.W.13 – Ganesh reveals that he learnt after the incident that the applicant was having an affair with accused No.1 – Ravi. Apart from the said statement, there is nothing on record to show that there was any quarrel/dispute between the applicant and the deceased, on account of the same. As far as conspiracy alleged to have been hatched in the Hotel Maharaja is concerned, admittedly, the applicant was not present at the hotel, at

the relevant time. Admittedly, the applicant was not even present at the spot where, the deceased was done to death. The prosecution has not brought on record the CDRs of the applicant, to show that the applicant was in touch with the accused when the alleged incident took place. Admittedly, it is accused No.1 – Ravi, who had hired some of the accused for committing the alleged offence and there is *prima facie*, nothing on record to indicate that the applicant had knowledge about the same. The applicant is in custody since 2011.

8. Considering the aforesaid evidence on record *qua* the applicant, the application is allowed and the applicant's sentence is suspended and she is enlarged on bail on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three

months on the day/date specified by the trial Court, till her Appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of her current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.