

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL INTERIM APPLICATION NO.1985 OF 2023
IN
CRIMINAL APPEAL NO. 525 OF 2023***

Sumitra Gangappa Jutti	... Applicant
Versus	
State of Maharashtra	...Respondent

Ms. Shifa Khan i/b Dr. Yug Mohit Chaudhry, for the Applicant.
Ms. S. S. Kaushik, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.***

DATE : 11th JULY 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 the aforesaid appeal.
3. The applicant vide Judgment and Order dated 16th August 2022, passed by learned Additional Sessions Judge, Sangli, in Sessions

Case No. 52 of 2021, has been convicted and sentenced as under:-

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- in default, to suffer rigorous imprisonment for 2 months.

4. Learned counsel for the applicant submits that the prosecution case rests on the sole testimony of PW1 – Roshani Kaushal Shinde, an eye-witness to the incident. She submits that PW1 – Roshani although has alleged that she saw the applicant wrapping a cloth around the neck of the new born child, had failed to report the said incident immediately to the hospital staff, much less failed to raise an alarm. PW1 – Roshani has stated that she was assuming that the applicant was breast feeding her child and therefore, had not disclosed that the applicant strangled her newly born child. As far as the evidence of doctors is concerned, the said evidence is hearsay, inasmuch as, they had learnt from the nurse Rupali Bajantri (PW3) that the applicant was doing something with the cloth around the baby's neck. PW3 - Rupali in her evidence has stated that when she

attended the patient i.e. the applicant, she did not noticed any movement of the baby and that on enquiry, the applicant did not disclose anything. She has further stated that PW1 – Roshani told them that some time prior she saw the applicant doing something with the cloth around the baby's neck. The cause of death of the child is stated to be “Death due to Asphyxia due to ligature compression of neck”. PW1 – Roshani in her cross-examination has stated that the applicant had told her that her delivery was normal and that she would breast feed the child whenever the baby would cry.

5. Pursuant to our order dated 19th June 2023, the learned counsel for the applicant has filed an affidavit of the applicant. In the said affidavit, the applicant has stated that she would be residing with her paternal uncle – Gangappa Salmalya Jutti and his wife Mrs. Sharada Gangappa Jutti, as she has no family or relatives residing in Maharashtra. She has further stated that she was living at the very same address prior to her arrest and that the said address is mentioned in the appeal memo. She has further stated that she belongs to a poor

strata of society and has worked as an agricultural labourer all her life. She has further stated that her husband had abandoned her when she got pregnant and that apart from her paternal uncle and aunt, she has no support and as such would not be in a position to arrange for a surety. She has further undertaken to attend regular counselling sessions at Padmabhushan Vasantdada Patil Government Hospital, Sangli or any other nearby hospital, as may be directed by this Court. She has also undertaken to report to Vishrambaug Police Station, Sangli, or any other nearby police station, as may be directed by this Court. The applicant is in custody since 2020. The appeal has been admitted by this Court vide order dated 12th April 2023 and the same is not likely to come up for the hearing in the immediate near future.

6. Considering the peculiar facts of this case, we allow the application and accordingly suspend the sentence of the applicant and enlarge the applicant on bail, pending the hearing and final disposal of her Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing Personal Bond in the sum of Rs.25,000/- ;
- ii) The Applicant shall report to the trial Court, once in six 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;
- v) The applicant to attend the counselling sessions as undertaken by her at the Padmabhushan Vasantdada Patil Government Hospital, Sangli or any other nearby Government hospital close to where she resides, for her mental health, till the doctor deems it so necessary.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.