

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3983 OF 2023
IN
CRIMINAL APPEAL NO. 1094 OF 2023

1. Malan Shivaji Jadhav
2. Shivaji Ramchandra Jadhav ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Ritesh Thobde a/w Mr. Changdev Shingade for the Applicants.

Mr. J.P.Yagnik, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 1st DECEMBER, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicants seek suspension of their sentences and enlargement on bail, pending the hearing and final disposal of their aforesaid appeal.

3. The applicants, vide Judgment and Order dated 12th September, 2023, passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 271 of 2014, have been convicted 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. 5,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 323 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for one year;

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. The prosecution case rests essentially on three Dying Declarations i.e. two written and one oral. One Dying Declaration was made by the deceased to the Executive Magistrate (P.W.7); the other Dying Declaration, to the Police (P.W.13); and an oral Dying Declaration to the father (P.W.3) by the deceased.

5. In the oral Dying Declaration made by the deceased to her father i.e. P.W.3 – Haridas Takmoghe and in the written Dying Declaration recorded by the Police and (P.W.13 – Uttam Tukaram Palkar), the deceased, has stated that kerosene was poured on her person by her husband; that the applicant No.1 i.e. her mother-in-law set her ablaze and applicant No.2 i.e. her father-in-law instigated the co-accused.

6. In the first Dying Declaration recorded by the Executive Magistrate (P.W.7), the said witness has stated that he recorded the victim's Dying Declaration on the same day i.e. on 1st June, 2014 at 10.05 a.m.; that when he asked how she had sustained injuries on her person, the patient disclosed that her husband had poured kerosene on her person and set her ablaze, pursuant to which, she sustained injuries. The deceased further disclosed that her husband was constantly harassing her and that her husband was demanding Rs.50,000/- for purchase of a motorcycle and as such, she had made a complaint against her husband, her father-in-law and mother-in-law. A perusal of the Dying Declaration made by the deceased to P.W.7

does not, in any way, implicate the applicants i.e. of applicant No.1 of having set the deceased ablaze or of applicant No.2 instigating the co-accused.

7. Prima facie, there are discrepancies in the Dying Declaration, made first in point of time by the deceased to the Executive Magistrate (P.W.7) and the Dying Declaration recorded by the Police and the oral Dying Declaration made by the deceased to her father (P.W.3). It is not in dispute that the applicants were on bail, pending trial and that they have not abused or misused the conditions of bail. The appeal is of the year 2023 and the same is not likely to be heard in immediate near future.

8. Considering the aforesaid, the application is allowed and the applicants sentence are suspended and they are enlarged on bail, pending the hearing and final disposal of their aforesaid appeal, on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- each with one or two sureties in the like amount;
- ii) The applicants shall report to the trial Court, once in four months on the day/date specified by the trial Court, till their Appeal is finally disposed of;
- iii) The applicants shall keep the trial Court informed of their current addresses and mobile contact numbers 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.