

Anand

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

**INTERIM APPLICATION NO. 736 OF 2023
IN
CRIMINAL APPEAL NO. 218 OF 2023**

Smt. Sunita Lachharing Tamang .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Rajesh More, Advocate, for the Applicant
Mr. Y. M. Nakhwa, APP, for the Respondent – State

**CORAM : SUNIL B. SHUKRE AND
ABHAY S. WAGHWASE, JJ.**

DATE : 10 MARCH 2023

P. C.

. Heard.

2. On going through the impugned Judgment and Order and also notes of evidence filed on record by learned counsel for the Applicant, we find that there is no clinching evidence brought on record by the prosecution so as to prove presence of the deceased with the Applicant till his last moment and the fact that it were only the Applicant, who was lastly seen with the deceased. No doubt, stoll (Odhani) has been recovered at the instance of the Applicant but this circumstance alone would not be sufficient to establish case of the prosecution based upon circumstantial evidence. One of the essential links in the

circumstantial evidence is of the accused having been lastly seen with the deceased and the evidence in that regard here is of doubtful nature. Insofar as this aspect of the matter is concerned, we do not find any detailed discussion having been made by the learned Judge in the impugned Judgment. The Applicant was reported to be on bail during the trial.

3. In the circumstances noted above, we are of the view that the Applicant has made out a prima facie case for suspension of sentence and her provisional release on bail. Hence, the order.

O R D E R

- (i) The Application is allowed;
- (ii) The substantive sentence imposed upon the Applicant is hereby suspended till final disposal of the Appeal. Fine amount is already paid by the Applicant as submitted by learned counsel for the Applicant and so there is no need to issue any direction about the same;
- (iii) Meanwhile, we direct that the Applicant be released on bail on her furnishing a P. R. Bond in the sum of Rs. 50,000/- together with two solvent sureties in the like sum on conditions that the Applicant shall appear before this Court as & when required and shall not indulge in any unlawful activity.

4. The Application is disposed of.

(ABHAY S. WAGHWASE, J.)

(SUNIL B. SHUKRE, J.)