

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

CRIMINAL INTERIM APPLICATION NO. 996 OF 2023

IN

CRIMINAL APPEAL NO. 498 OF 2019

Abdul Shakur Walesab Nadaf ... Applicant/Appellant

V/s.

State of Maharashtra ... Respondent

Mr. V. H. Narvekar, Appointed Adv. for the Applicant/Appellant.

Ms. S. D. Shinde, APP for the State/Respondent.

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

DATED : MARCH 20, 2023

PC. :

1. Heard.

2. Learned Counsel for the applicant/appellant has taken us through the evidence of three witnesses and has submitted that none of these witnesses has established that at the time of incident, the appellant and his deceased wife were residing together and that, the deceased wife of the appellant has not been proved to be in the custody of appellant. He submits that the burden is upon the appellant to explain as to why and in what manner his deceased wife died. He further submits that there was only one Eye Witness i.e. son of the deceased, but his evidence doesn't point out any fact which incriminates the appellant in the present case.

3. So far as the evidence of son of the deceased and the appellant is concerned, learned Counsel for the appellant is right. We find that *prima-facie* it is not the case that it doesn't inspire any confidence. As regards the evidence about the deceased and the appellant residing separately i.e. the deceased residing at Morvi, it is indeed the evidence so established on record, but at the same time PW-3 Mubina Abdul Gani Pathan, being cousin sister of the deceased, has categorically stated that inspite of the appellant and the deceased residing separately, deceased used to frequently visit the room, where the appellant was residing with his son, which the appellant had taken on rent. The evidence relating to frequent visits of the deceased to the rented room of appellant, has not been controverted in any manner by the appellant during cross-examination of PW-2 Jakir Najir Khan. If such is the nature of evidence brought on record, we must say that at this stage no case is made out.

4. Then there is also evidence available on record, which is of PW-3, cousin sister of the deceased, which indicates that there was an oral Dying Declaration made by the deceased to PW-3, about which as of now there is no doubt about its reliability. There is also some evidence in the nature of extra-judicial confession made by one of the witnesses of the appellant. The appellant has not given any explanation about presence of human blood on his person and clothes, which were found to have been worn by him immediately after the incident. The appellant has only denied the seizure of blood stained clothes and also presence of blood stains on his body.

5. If such evidence has been established on record, we find at this

stage the appellant has not made out any case for suspension of sentence and consequent relief for grant of bail. The interim application, therefore, stands rejected.

6. The efforts be made by the prosecution, so that the matter can be taken up by this Court for its expeditious disposal.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]