

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

***CRIMINAL INTERIM APPLICATION NO.1415 OF 2023
IN
CRIMINAL APPEAL NO.494 OF 2023***

Lakhan Bharat Gaikwad	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Priyal G. Sarda, for the Applicant.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent – State.

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

DATE : 4th AUGUST 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant vide Judgment and Order dated 25th January 2023, passed by learned Additional Sessions Judge, City Civil

& Sessions Court, Greater Bombay in Sessions Case No.60 of 2018, 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 a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 3 months;
- for the offence punishable under Section 498A of the Indian Penal Code, to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.2000/-, in default, to suffer rigorous imprisonment for 2 months.

Both the sentences were directed to run concurrently.

4. Perused the papers. The applicant is the husband of deceased – Manisha Gaikwad. According to the prosecution, the incident took place on 1st October 2017 at about 3:00 p.m. It is alleged that in the said incident the applicant threw a thinner on the deceased and set her ablaze, as a result of which she expired on 5th October 2017. It appears that 3 dying declarations of deceased –

Manisha were recorded. The learned Judge has discarded the first two dying declarations, for the reasons set out in the impugned judgment and order and has relied on the third dying declaration, which is recorded by the API, Faraskhana Police Station, Pune, on 4th October 2017. It appears that the incident took place on 1st October 2017 at around 3:15 p.m. In the first dying declaration (Exhibit-67), Manisha (deceased) has stated that there used to be quarrels between her and her husband and that on the day of the incident, the applicant threw kerosene on her person and thereafter lit the gas and threw a lit napkin on her person, as a result of which, she sustained burn injuries. Manisha (deceased) has stated that she was taken to the hospital by the fire brigade persons. The said dying declaration, so recorded does not bear the signature or the thumb impression of Manisha (deceased) and hence, the same was not relied upon by the learned Judge. The second dying declaration was recorded by upper Clerk of the Tahsildar on 2nd October 2017. In the said statement, so recorded, Manisha (deceased) has stated that the incident took place on 1st October 2017 in the afternoon at 3:00 p.m. She has stated that

her husband assaulted her and thereafter threw phenyl on her person and set her ablaze with a lighter. There is no endorsement of any doctor on the said dying declaration. The doctor appears to have signed on the said dying declaration and there is a left toe impression on the said dying declaration. For the reasons set out in the impugned judgment and order, the said dying declaration is also been disbelieved by the learned Judge.

5. The third dying declaration relied upon by the learned Judge is dated 4th October 2017 (Exhibit – 58). In the said dying declaration, Manisha had stated that the incident took place on 1st October 2017 at about 3:15 p.m. and that there was a quarrel between her and her husband, pursuant to which, her husband threw thinner on her person and threw a lit matchstick on her person. She has further stated that she was brought to the hospital by the people from the fire brigade.

6. Learned counsel for the applicant submits that there is no endorsement of the doctor or evidence to show that Manisha was in a fit mental condition to make such a dying declaration, inasmuch as, the said dying declaration was recorded after 3 days of the incident. It appears that the learned Judge has essentially convicted the applicant on the basis of the dying declaration and there is no corroboration to the said dying declaration, so relied upon. According to the learned counsel for the applicant, there were sufficient inconsistencies in the 3 dying declarations and as such the learned Judge ought not to have relied on the same, having regard to the inherent inconsistencies in them. He submits that in the facts, the possibility of the deceased having committed suicide, cannot be ruled out. The applicant is in custody since 2017. The appeal is of the year 2023 and the same is not likely to come up for the hearing in the immediate near future.

7. Considering the evidence on record, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the 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.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 the appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his 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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.