

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

**INTERIM APPLICATION NO.2418 OF 2022
IN
CRIMINAL APPEAL NO.735 OF 2022**

Shoeb Mansuri @ Samir Shaikh
Age 28 years, Occ.Service
R/o Behind Annapurna hotel,
Shahad gate, Ulhasnagar,
Dist.Thane
Org.R/o Shadipur, Po.Harganur,
Tal.Nagina, Dist.Bijnour, Applicant/Appellant

Vs.

1. The State of Maharashtra
(Through Kamothe Police
Station, Prosecution
C.R.No.141/.2017)

2. Kamal Ajit Haldar (wife deceased)
R/o Vilas Bhagar Chawl,
Motha Khanda, Kamothe,
Navi Mumbai. Respondents

**CORAM: NITIN W. SAMBRE
& R.N. LADDHA, JJ.**

DATE : 13 FEBRUARY 2023.

Mr Aniket Nikam i/by Mr Amit Icham for Applicant/Appellant.

Mr A. R. Kapadnis, APP for Respondent-State.

Order (Per R.N. Laddha) :

This is an application for suspension of sentence and grant of bail during the pendency of the Appeal.

2. The trial Court, by the judgment and order dated 7.7.2022, in Sessions Case No.342 of 2019 (old Case No.12 of 2018), convicted the Applicant, for the offences punishable under Sections 302, 326, 324, 323, 504, 506 of the Indian Penal Code and sentenced to suffer life imprisonment.

3. It is the case of the prosecution that on 3.10.2017, the Applicant assaulted the deceased Kamal Ajit Halder with a knife and committed his murder.

4. In *Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote & Ors.*¹, the Hon'ble Supreme Court enunciated that a detailed examination of evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. Keeping in view, the above principle we have heard learned Counsel for the Applicant and learned APP for the Respondent-State.

5. Mr Aniket Nikam, the learned Counsel appearing on behalf of the Applicant, submitted that though the prosecution's case is

¹ (1980)2 SCC 559.

based on the statements of the eyewitnesses, none of the alleged eyewitnesses in their evidence before the Court supported the prosecution. He submitted that no reliance could be placed on the statement, which was considered to be the dying declaration of the deceased, as the alleged declaration was recorded without obtaining an endorsement of the concerned Medical Officer that the deceased was conscious and oriented to time, place and person before, during and at the end of the dying declaration.

6. Mr A.R. Kapadnis, learned APP for the State, submitted that there is evidence in the form of a dying declaration to connect the present Applicant with the crime. It is submitted that the certificate of the doctor before recording the dying declaration by the Police Officer is not mandatory as long as the Police Officer finds that the deceased is in conscious and fit state of mind. In his view, even if the conviction is based on the sole testimony and the dying declaration, the same is corroborated by other material on record.

7. It is not disputed that none of the eyewitnesses to the incident supported the prosecution's case. It is also not in dispute that there is no endorsement over the dying declaration of the deceased that he was conscious and oriented to time, place and person before, during and at the end of the dying declaration. It is also not in dispute that though the dying declaration was narrated

to PW 4 in Hindi, the same was recorded in Marathi. The prosecution did not examine the Medical Officer before whom the alleged dying declaration was recorded. The Investigating Officer, in his cross-examination, has admitted that at the relevant time, he did not specifically obtain the opinion of the Medical Officer as to whether the deceased was physically and mentally fit to give a statement.

8. Considering these facts, the case for suspension of sentence and grant of bail is made out. The Application, is, accordingly, allowed in the following terms.

ORDER

- i) During the pendency of the present Appeal, a substantive sentence imposed upon Applicant is suspended, and he be released on bail on the execution of a PR Bond of Rs.25,000/-, with one or two solvent sureties in the like amount, to the satisfaction of the learned trial Court.
- ii) The Applicant shall remain present before this Court as and when directed.
- iii) Interim Application stands disposed of.

[R. N.LADDHA, J.]

[NITIN W. SAMBRE,J.]

