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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3109 OF 2023
IN
CRIMINAL APPEAL NO.957 OF 2023

Gayabai Namdeo Shirsath] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Shrirang Katneshwarkar, for the Applicant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 06th September, 2023.

P.C.

1] By the present Application, the Applicant, mother-in-law of the deceased, seek suspension of sentence imposed on her on being convicted under Section 498A of the IPC and she also seek her release on bail, on such terms and conditions, as the Court deems fit and proper.

2] Heard the learned counsel for the Applicant and the learned APP for the State and perused the impugned Judgment, awarding the conviction.

3] Four accused persons faced the charge under Section 306, 498A, read with 34 of the IPC pursuant to the death of Madhuri who was married to Accused No.1 on 12.03.2018. The other accused are the parents and brother of Accused No.1.

The subject CR came to be registered upon the complaint filed by PW 1, the father and Madhuri and the accused persons were subjected to trial in Sessions Case No.149/2020 for charge, under Section 498A and 306 of the IPC.

All the Accused stood acquitted of the charge under Section 306, as the prosecution failed to prove whether she accidentally fell into the well or she committed suicide, and except accused No.2 i.e. the present Applicant, the other three accused were also acquitted of the charge under Section 498A of the IPC.

4] As far as Section 498A is concerned, the learned Judge, by relying upon the evidence of PW 1, PW 3 and PW 5, held the Applicant guilty of assaulting the deceased with a Khurpa and it was construed that apart from causing physical injury, it also caused mental cruelty to her and hence finding of guilt was recorded and she was convicted under Section 498A of the IPC.

Prima facie, when the evidence of PW 1, PW 3 and PW 6 is perused, it refer to an incident four months prior to her death when her mother in law is alleged to have assaulted her with Khurpa and she was treated. However, PW 1 do not specify the date or the time and the assault and he depose that once her mother in law had hitted her with a sickle on her head. He do not refer to the deceased being taken for medical treatment.

Apart from this, no medical certificate of treatment is produced by prosecution.

5] In the wake of above, since this ultimately would be a matter of appreciation of evidence, which was relied upon by the learned judge for convicting the Appellant, considering the minuscule sentence of

Rigorous Imprisonment of six months and since the prima facie case is established by the Applicant, Appeal is admitted, on the ground of inconsistency in prosecution case.

It is informed that the Applicant was on bail during the trial and hence she deserve to be released on bail subject to following conditions :

- a] The Applicant shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- b] The applicant shall furnish her address to the concerned Police Station and keep the Investigating Officer updated about any change in address.
- c] The sentence imposed on the Applicant by the impugned Judgment is of conviction is suspended, pending the Appeal.

Interim Application is disposed off in the above terms.

[BHARATI DANGRE, J]