

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

***INTERIM APPLICATION NO.3286 OF 2023
IN
CRIMINAL APPEAL NO.876 OF 2023***

Sulochana Dhanraj Badgery

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Gaurav Bhawnani i/b Mr. Abdul Wahab Khan, for the Applicant.
Ms. P. P. Shinde, A.P.P for the Respondent – State.

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

DATE : 5th DECEMBER 2023

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (original accused No.3) seeks suspension of her sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.
3. The applicant alongwith another co-accused vide judgment and order dated 29th April 2023 passed by the learned Additional

Sessions Judge, City Civil and Sessions Court, Greater Bombay, in Session Case No.722 of 2018, has been convicted as under:

— for the offence punishable u/s. 302 r/w. Section 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for three months;

— As far as the other offence is concerned, the applicant has been acquitted of the offence punishable under Section 304-B r/w 34 of the Indian Penal Code.

4. Perused the papers. The applicant is the sister-in-law of the deceased. The prosecution case rests entirely on circumstantial evidence. The conviction is essentially based on the fact that the deceased was last in the company of the applicant with another co-accused, and as such, the applicant had not discharged the burden cast on her under Section 106 of the Evidence Act. Although, the prosecution case is one under Section 302 of the Indian Penal Code i.e. charge of murder of causing death of the deceased, the suggestions

given by the prosecution whilst examining the defence witnesses i.e. DW1 and DW2, are to the effect, that the deceased committed suicide. The prosecution examined the father of the deceased as PW1 i.e. the complainant. He has stated that the accused No.1 i.e. the applicant's brother would assault his daughter and was demanding Rs.50,000/-. He has further in his evidence stated that his daughter had informed him that the applicant had poured hot lentil on her leg, pursuant to which he had filed a complaint with the Shahu Nagar Police Station. A perusal of the cross-examination of the said witness would reveal that the NC which was filed, was filed by the deceased alleging that her husband i.e. accused No.1 had quarreled and had assaulted her. The said witness has accepted that no complaint was filed as against the applicant of having poured hot lentil on his daughter's leg. The said fact, is also missing in the FIR lodged by PW1 and was disclosed to, for the first time by PW1 in his evidence. The trial Court has acquitted the applicant's father, accepting his plea of *alibi*. It is not in dispute that the applicant has been acquitted of the offence punishable under Section 304-B r/w 34 of the Indian Penal Code. The applicant has

been convicted only on the basis of the medical evidence and have regard to Section 106 of the Evidence Act. The applicant is in custody for the last 5 years. The appeal is of the year 2023 and the same is not likely to come up for the hearing in the immediate near future.

5. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and she is enlarged on bail, pending the hearing and final disposal of her 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.20,000/- 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 her Appeal is finally disposed of;

iii) The Applicant shall keep the trial Court informed of her 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.

6. Interim Application is allowed in the aforesaid terms and accordingly disposed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.