

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

***INTERIM APPLICATION NO. 3580 OF 2022
IN
CRIMINAL APPEAL NO. 335 OF 2022***

Moharamali Shafiq Khan
Age 39 years, Occ: Labour,
R/at: House No.451, Madhavnagar,
Near Saudagar Building,
Bhiwandi, Thane
(Presently in Central Jail, Nashik)

... Applicant
(Org. Appellant)

Versus

State of Maharashtra
Through Bhoiwada Police Station

... Respondent
(Org. Complainant)

Mr Hrishikesh R. Chavan, appointed Advocate from Legal Aid for Applicant.

Mrs M. M. Deshmukh, APP for the Respondent-State.

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

DATE : 16 FEBRUARY 2023

Order (Per R. N. Laddha, J.) :

This is an Application for suspension of sentence and release on bail during the pendency of the Appeal.

2. The trial Court, by the judgment and order dated 26 April 2018 in Sessions Case No. 243 of 2013, convicted the applicant/accused for the offences punishable under Sections 342 and 302 of the Indian Penal Code and sentenced him to suffer life imprisonment.

3. According to the prosecution, deceased Afsana was married to the applicant/accused five months before the incident. The accused used to harass and ill-treat her because of the non-fulfilment for his demand of dowry. On a fateful day, he gagged her mouth with a cloth ball, poured kerosene and set her on fire. As the deceased suffered burn injuries, she was immediately taken to the hospital. Since it was a case of burning, the Police were informed. Accordingly, the Police visited the hospital. In the presence of the Medical Officer, API Shailendra Shivram Chavan (PW9), recorded the statement of the deceased wherein she alleged that her husband/accused poured kerosene on her person and set her ablaze. However, on 20 December 2012, Afsana succumbed to burn injuries.

4. Mr Rishikesh Chavan, a counsel appointed for the applicant/accused, submitted that no reliance could be placed on the statement, which was considered to be the dying declaration of the deceased, as the declaration was not made to a Magistrate but to

a Police Officer, despite having ample time, and no explanation was offered as to why the declaration could not be given to the Magistrate.

5. It is submitted that the deceased had been admitted to the hospital with 100% burns. Her face, ears and throat were completely burned. In this context, to further raise suspicion about the dying declaration, it is argued that doctor did not endorse the deceased's statement certifying that she was in a fit state of mind to depose. It is submitted that the inquest panchanama indicates that the husband of the deceased brought her to the Civil Hospital, Thane, from IGM Hospital, Bhiwandi. It is submitted that the learned trial Court incorrectly relied on the discovery of the keys, at the behest of the applicant/accused. It is submitted that the applicant/accused has been languishing in jail for over a decade.

6. Mrs M. M. Deshmukh, learned APP for the Respondent-State, submitted that the impugned conviction is based on the reasoning reflected in judgment and order. She submitted that not making any endorsement on the dying declaration by the doctor, itself is no ground to exclude the dying declaration from consideration. She submitted that the circumstances proved by the prosecution are sufficient to connect the applicant/accused with the crime.

7. There is no dispute that there are no eyewitnesses to the incident. It was not in a conflict that, on the dying declaration, no endorsement was made by the doctor certifying that the deceased was in a fit state of mind to depose. It is also not in dispute that the deceased had been admitted in the hospital with 100% burns. The inquest panchanama shows that the deceased has her face, ears and throat completely burned. Further, it revealed from the inquest panchanama that the applicant/accused himself brought the deceased to Civil Hospital, Thane from IGM Hospital, Bhiwandi. It is also an admitted position that the applicant/accused has been in jail for over ten years.

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

ORDER

(a) 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 P.R. Bond of Rs.25,000/-, with one or two solvent sureties in the like amount, to the satisfaction of the learned trial Court.

(b) The Applicant shall remain present before this Court as and when directed.

9. Interim Application stands disposed of.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

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DHARMENDER
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BIPIN DHARMENDER
PRITHIANI
Date: 2023.02.21
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