

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.65 OF 2023

IN
CRIMINAL APPEAL NO.29 OF 2023.

[Rukhaiyyabi w/o Sk. Sadiq ..V/s.. The State of Maharashtra.]

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders.*

Court's or Judge's order

Mr P. R. Agrawal, Advocate for the Applicant.
 Ms M. H. Deshmukh, Addl. P. P. for the Non-Applicant/State.
 Mr A. S. Mardikar, Senior Advocate with Mr D. Singh, Advocate Assist prosecutor.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 15th FEBRUARY, 2023.

. Heard.

2. This is an application seeking suspension of execution of sentence passed by the Trial Court in Sessions Case No.15 of 2015, whereby the Applicant Rukhaiyyabi was convicted for the offence punishable under Sections 302, 504 and 506 read with Section 34 of the Indian Penal Code (IPC), 1860. She has been sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the IPC.

3. The Applicant claims suspension of execution of sentence on the ground that the Trial Court erred in concluding that the Applicant has shared common intention and she equally responsible for the murder of Sk. Faim with the aid of Section 34 of the IPC. It is argued that the prosecution case rests on two eye witnesses i.e. PW-1 Sk. Saeed Sk. Rahim and PW-3 Shamimbano Shaikh Rashid, who do not spell out the role of Applicant besides mere presence. Non-Applicant resisted the application by

contending that all accused have acted in furtherance of their common intention. The informant has specified the active role of Applicant, therefore it is not a fit case to suspend sentence.

4. Perused the entire record as well as the impugned judgment. Information has been lodged on the very day by eye witness PW-1 Sk. Saeed Sk. Rahim specifying the role of accused No.1 Sk. Sabir Sk. Sadiq and accused No.2 Sk. Mujahid Sk. Saidq. Particularly, it has been stated that accused No.2 Sk. Mujahid Sk. Saidq dealt a blow by wooden rafter to Sk. Faim, which turned to be fatal. Though injured Sk. Faim was hospitalized for three days, his dying declaration could not be recorded. The evidence of PW-1 Sk. Saeed Sk. Rahim as per his First Information Report (FIR), the role assigned to Applicant, who is mother of both co-accused is about abusing and instigating the co-accused. PW-3 Shamimbano Shaikh Rashid has assigned further role that she had handed over a wooden rafter to co-accused as well as hit at the genital portion of the deceased. It is pointed out that the statement of PW-3 Shamimbano Shaikh Rashid has been recorded after six days from the incident for which no plausible explanation has been accorded. Moreover, it is submitted that the role of Applicant to the extent of hitting at the genital is an omission.

5. By and large, it is the prosecution case that the accused No.1 Sk. Sabir Sk. Sadiq has dealt a knife blow at the face of informant whilst accused No.2 Sk. Mujahid Sk. Saidq dealt a fatal blow by wooden rafter at the head of the deceased. It is a matter of appreciation whether the Applicant has shared common

intention which pre-supposes a prior meeting of mind. During trial, Applicant was on bail. Considering the material which is adduced against the Applicant, we deem it fit to suspend the execution of sentence. If the Applicant Rukhaiyyabi succeeds in appeal, the position would become irreversible.

6. In view of above, criminal application is **allowed**. Execution of substantive sentence passed in Sessions Case No.15 of 2015 as regards to the Applicant Rukhaiyyabi is hereby suspended till disposal of appeal.

7. In the meantime, Applicant Rukhaiyyabi shall be released on bail on furnishing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety of like amount.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE