

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 180/2023
IN
CRIMINAL APPEAL NO. 89/2023

Siddharth Jijeba Gaikwad
Vs
State Of Mah. Thr. PSO Tamgaon Tah.Sangrampur Dist.Buldhana

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr M.V.Rai, advocate for the applicant.

Mr S.M.Ghodeswar, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/06/2023.

1. Heard.
2. Present application is filed by the applicant for suspension of sentence and release him on bail under Section 389 of the Code of Criminal Procedure.
3. The applicant/appellant who is the husband of the deceased was prosecuted for the offence punishable under Section 498-A and 304-B of the Indian Penal Code.
4. As per the allegations, the marriage of the deceased with accused was performed on 3/5/2014 and she was ill-treated for the illegal demand and her death is caused by consuming poison at her parental house. The learned trial Court had appreciated the evidence

and held that the appellant was guilty for the offence punishable under Section 498-A and 304-B of the Indian Penal Code and sentenced to suffer Simple Imprisonment for seven years of the Offence Punishable Under Section 304-B of the Indian Penal Code and Simple Imprisonment for three years of the offence punishable under Section 498-A of the Indian Penal Code.

5. Being aggrieved and dissatisfied with the judgment, the present appeal is preferred by the appellant on the ground that the allegations regarding illegal demand is not at all proved by the prosecution. Moreover, the learned trial Court has not considered that the deceased had committed suicide at her parent's house and her death is not caused in the matrimonial house. There were no previous complaints against the present appellant. Thus, it is apparent that the learned trial Court has not appreciated the evidence in a proper manner and wrongly convicted the present appellant. The appellant has every chance of success in the present appeal but it will take its own time for its final decision. In the meantime, if the sentence is executed then the appeal will become infructuous.

6. The said application is strongly opposed by the learned APP on the ground that death of the deceased is

caused within one year of the marriage. The illegal demands are proved. The learned trial Court has already taken into consideration the aspect and shown the leniency while awarding the punishment. If the appellant is released on bail, he will not be available if the appeal is decided against the appellant.

7. Heard both the sides. Perused the record.

8. It is apparent from the judgment of the learned trial Court that in order to prove the offence against the present appellant, the prosecution has examined material witnesses to whom the victim has disclosed about the illegal demand and harassment at the hands of the appellant. Admittedly, the learned trial Court while awarding the punishment considered the aspect and shown the leniency to the appellant. At the same time, it is further apparent that the appellant was on bail throughout the trial and he has not misused his liberty. The appeal will take its own time for its final decision. In the meanwhile, if sentence is executed then appeal will become infructuous. Considering the aspect that appellant has not misused his liberty and he is a permanent resident of Akola, Taluka Akola, no criminal antecedents are against him.

9. In view of above, the criminal application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

- a) Criminal application is allowed.
- b) The execution of the sentence is suspended till the final disposal of the appeal.
- c) The appellant is released on bail on executing P.R. bond of Rs. 25,000/- with one solvent surety of like amount.
- d) The appellant shall put his presence before the Additional Sessions Judge, Khamgaon, District Buldhana on first day of every month and the Sessions Judge shall record his presence before it.
- e) The appellant shall furnish his cell phone number and address with the address proof along with the names of two relatives alongwith their address proof.

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1. The appeal be placed before the court after preparation of private paper-book for final disposal.