

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

CRIMINAL APPLICATION (APPA) NO. 213/2022

IN

CRIMINAL APPEAL NO. 168/2022

(Santosh Ramchandra Matte Vs. 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 orders

Shri S. M. Jaiswal, Advocate (appointed) for applicant.
Mr. M.J. Khan, APP for non-applicant/State.

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 06/01/2023.

This is an application seeking suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure. The applicant/appellant was charged for the offence punishable under Section 302 of the Indian Penal Code for committing murder of his uncle namely Dashrath. After investigation, on applicant denying guilt, he was put on trial. The prosecution has examined in all 12 witnesses and relied on certain documents. Having regard to oral and documentary evidence, the Trial Court has recorded a finding of guilt and accordingly convicted the applicant vide judgment and order dated 31.08.2021 which is the subject matter of challenge in the appeal.

2. The applicant seeks for suspension of execution of sentence on the ground that he has fair chances of success in the appeal. It is stated that the evidence led by the prosecution is not sufficient to meet the requisite standard

of proof. It is argued that only on the basis of circumstantial evidence, the applicant has been convicted. It is brought to the notice that there is no direct evidence and chain of circumstances is not complete to exclude the hypothesis of innocence of the accused.

3. With the assistance of both sides, we have minutely examined the entire evidence and the documents sought to be relied by the prosecution. At the instance of report lodged by son of deceased after few hours from the occurrence, crime has been registered. In the report itself the informant has stated that on the date of occurrence at about 07.30. p.m., he has seen the accused leaving cattle shade where in proximity, the deceased was found lying dead. The informant led evidence to that effect which speaks about presence of applicant on the spot in proximity and additionally bears statement about extra judicial confession. Moreover, there is evidence of some other witnesses who have seen the accused around the time of occurrence on the spot. The prosecution is also relying on the chemical analysis ('CA') report. It is brought to the notice by the learned APP that after few hours in late mid night, the accused was arrested and from his person, blood stained clothes have been seized. The learned APP took us through the CA report which discloses that the blood stains found on the person of the accused were of 'A' group which was the blood group of deceased.

4. Having regard to the above material and the reasons stated by the Trial Court while recording the finding of the guilt, we are not inclined to allow this

application. Hence, application stands rejected.

5. Fees of the appointed learned counsel for the applicant/appellant be paid as per Rule.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA BHARAT
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