

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

CRIMINAL APPLICATION (APPA) NO.958 OF 2022

IN

CRIMINAL APPEAL NO.742 OF 2022

[Nivrutti S/o Balaji Solanki ..V/s.. 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

Shri P. S. Dhenge, Advocate for the Applicant/Appellant.
Ms M. H. Deshmukh, Addl. P. P. for the Respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 17th JANUARY, 2023.

. This is an application seeking suspension of execution of sentence in terms of Section 389 of the Code of Criminal Procedure, 1973.

2. The Applicant/appellant has been convicted by Trial Court in Sessions Case No.48 of 2020 for the offences punishable under Sections 302 and 498A of the Indian Penal Code, 1860 for committing murder of his wife.

3. Shri Dhenge, learned Counsel appearing for Applicant would submit that the Trial Court failed in error in holding that the accused has committed the murder of his wife. It is his submission that there are no eye witnesses to the occurrence and the circumstances brought by the prosecution are not enough to conclude the only possibility about the guilt of accused. He would submit that the material witness PW-3 Vishnu has not fully supported the prosecution case and thus, the evidence is not sufficient to convict the accused. Ms Deshmukh, learned

Additional Public Prosecutor, resisted this application by contending that though the case is based on circumstantial evidence, the earlier quarrel in between the couple, accentuates the finding of guilt against the accused. It is argued that on the place of occurrence, a ligature namely a cable was found, which was used by accused for strangulation, and thus, the applicant does not deserve for suspension.

4. With the assistance of both sides, we have gone through the entire evidence as well as the judgment rendered by Trial Court. The prosecution has examined in all seven witnesses to bring home the guilt. The prosecution led emphasis on the evidence of PW-1 informant, PW-3 Vishnu and PW-5 Kisan who is villager. The evidence of informant is no doubt of *hearsay* nature. PW-3 Vishnu, who was son of the deceased as well as accused was present on intervening night with his deceased mother. Though he stated about the quarrel between the couple, however, on material aspect he states that on that night, his father was away from the house i.e. went to attend ceremony. The evidence of PW-5 Kisan also speaks about the earlier quarrel.

5. It is submitted that during trial, the Applicant was on bail. Having regard to the nature of evidence, we deem it appropriate to suspend the execution of sentence as trial will take some time for disposal. In terms of above, application is allowed. Execution of substantive sentence is hereby suspended till disposal of appeal.

6. In the meantime, the Appellant shall be released on bail on furnishing P.R. Bond of Rs.15,000/- (Fifteen Thousand Only) with one surety of like amount. The application stands disposed in above terms.

7. The Trial Court shall ensure about the deposit of entire fine amount before issuance of release warrant.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE