

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPA) NO. 1170/2022 IN
CRIMINAL APPEAL NO. 901/2022

(Smt. Subhadra Kisunlal Dewangan Vs. 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

Mr. Y. A. Kullarwar, Advocate for applicant.
Mr. S. S. Doifode, APP non-applicant/State.

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 12/01/2023.

Heard.

2. This application is for seeking suspension of execution of substantive sentence of accused No. 4 – Subhadra Dewangan who was convicted by the Trial Court for the offence punishable under Section 302, 203 read with Section 34 of the Indian Penal Code.

3. The learned counsel appearing for the applicant/appellant would submit that the Trial Court seriously erred in convicting the applicant – Subhadra on the basis of material which cannot be used against her. It is argued that case is based on circumstantial evidence and chain of circumstances as regards presence of applicant– Subhadra is totally incomplete. It has been argued that at relevant time, applicant-Subhadra was not present in the house, however merely a guess work, the Trial Court has convicted her.

4. With the assistance of both side, we have gone through evidence of all prosecution witnesses.

Particularly, we have thoroughly examined the evidence of PW-3 (informant), PW-4 (informant's wife), evidence of Medical Officer, injury certificate etc. We have also gone through the reasoning assigned by the Trial Court for convicting the applicant/accused. The Trial Court held that co-accused Ravi Dewangan has committed murder of Neha by throttling whilst applicant-Subhadra must have been present at the relevant time. The Trial Court has acquitted Neha's husband, Nagendra Dewangan and Neha's father-in-law, Kisunlal (accused No.3) stating that they were not present at the relevant time.

5. Perusal of entire evidence and reason assigned by the Trial Court, it reveals that conviction of applicant-Subhadra is based on account that she was allegedly present in the house at the relevant time. The learned counsel appearing for applicant/appellant has pointed out that the said sole circumstance is not proved as well as not sufficient to fasten the guilt. Considering the nature of material against the accused-Subhadra, we found that this is a fit case to exercise our discretion in her favour. In view of that, application stands allowed.

6. Execution of substantive sentence passed against applicant- Subhadra Kisunlal Dewangan in Sessions Case No. 57/2021 is hereby suspended till the conclusion of appeal. In the meantime, she shall be released on bail on furnishing her P.R. Bond of Rs. 15,000/- with one surety in the like amount.

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(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)