



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 04 OF 2024
IN
CRIMINAL APPEAL NO. 01 OF 2024

Akash s/o Vinod @ Vinayak Bhujanga,
Age 27 years, Occu : Labour,
R/o. Sakol, Tq. Shirur Anantpal,
Dist. Latur.
At present at District Prison, Latur.
UTP No.56.

... Applicant
(Orig. Accused)

Versus

The State of Maharashtra,
Through Police Station, Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur.

... Respondent.

...
Mr. V. D. Gunale, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent – State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23rd JANUARY, 2024

PRONOUNCED ON : 30th JANUARY, 2024

ORDER :

1. Here is application for suspension of sentence and grant of bail on account of conviction recorded by Assistant Sessions Judge, Nilanga, dated 24.11.2024 in Sessions Case No. 10 of 2020 for offence punishable under sections 304B and 498A of Indian Penal Code (IPC).

2. In favour of relief, learned counsel for applicant

pointed out that, initially crime was registered for offence under sections 302 and 201 of IPC, but learned Assistant Sessions Judge Nilanga recorded conviction for offence under sections 304-B and 498-A of IPC. He submitted that, deceased allegedly hanged herself, but there is no evidence as to for what reason she hanged. He pointed out that there is no evidence in support of maltreatment and cruelty. That, evidence shows that, when deceased hanged herself, at that time, doors of the house/room were closed from inside and door was required to be broke open. Therefore, applicant cannot be held responsible. According to him, allegations are about demand for setting up shop, but prosecution witnesses themselves admit that, there was already shop business, since prior to the marriage. It is submitted that, applicant was not available in the house at the time of alleged incidence and there is *defence of alibi*. However, still he is arrested and even held guilty in spite of no convincing evidence. According to him, as appeal would take long time to be heard and decided, he prays for suspension of sentence and grant of bail during pendency of appeal.

3. Learned APP submitted that, though deceased was found hanging, medical expert has noticed 8 injuries on her person. There is recovery of belt at the instance of accused. Medical expert has opined death to be homicidal. Incident has

taken place barely after one year of marriage. Resultantly, he opposed the relief .

4. After considering the submissions, it seems that, Shirur Anantpal Police Station registered crime bearing no. 28 of 2020 for offence punishable under sections 302, 304B read with section 34 of IPC. Apparently, charge was framed initially for offence under section 302, 498-A and 201 of IPC, but learned trial Judge has held applicant guilty for offence punishable under sections 304B and 498A of IPC and he is sentenced to suffer 10 years of imprisonment and 03 years of imprisonment, respectively.

5. It appears that, accusations are levelled that, accused was married to deceased on 02.01.2019. Deceased seems to have died due to hanging on 11.02.2020 and medico legal expert issued opinion about death to be due to ligature, strangulation. Doctor has also noticed injuries. There are allegations of beating by means of belt. However, *prima facie* on going through the judgment, prosecution case seems to have rested its case on circumstantial evidence. It is further emerging that, in all 11 witnesses were examined. *Plea of alibi* seems to have been taken. Defence witness Rupesh seems to be examined by him in support of its case. *Prima*

facie, it appears from the papers that door of the room where deceased hanged himself was required to be broke open to gain access. There is also evidence about door of deceased to be locked from inside.

6. Initially, AD seems to be registered. Occurrence is of 11.02.2020, but FIR is of 12.02.2020.

7. Case is admittedly rested on circumstantial evidence. Conviction has been recorded for section 304B of IPC in spite of being charge-sheeted for offence under section 302 of IPC. Therefore, taking above circumstances into consideration and as appeal is filed in January 2024, much more time would be required to hear and decide the same, relief as prayed deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Akash s/o Vinod @ Vinayak Bhujanga in Sessions Case No.10 of 2020 by the learned Assistant Sessions Judge, Nilanga on 24.11.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.01 of 2024.

- (iii) The applicant be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with two solvent sureties in the like amount.
- (iv) The applicant shall not commit any criminal activity.
- (v) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for their subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- (vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)