



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.502 OF 2024 IN  
CRIMINAL APPEAL NO.108 OF 2024

Dattarao Madhav Karhale

... **APPLICANT**

**VERSUS**

The State of Maharashtra

... **RESPONDENT**

.....  
Mr. S.G. Bobade Advocate holding for  
Mr. D.A. Paikrao, Advocate for applicant  
Mr. S.D. Ghayal, A.P.P. for respondent  
.....

**CORAM : R.G. AVACHAT AND  
NEERAJ P. DHOTE, JJ.**

**DATE : 20th FEBRUARY, 2024**

**ORDER :**

Heard learned counsel for the applicant and learned  
A.P.P. for the respondent – State. Perused the papers on record.

2. This is an application for suspension of sentence  
awarded by the learned trial Court i.e. Sessions Judge, Vaijapur,  
District Aurangabad in Sessions Case No.115/2019, convicting the  
applicant/ appellant for the offence punishable under Section 302 of  
the Indian Penal Code.

3. The case is based on the dying declaration of the deceased Umesh. It is not in dispute that there are two dying declarations. It is the prosecution's case that, the applicant and deceased had given money to one person by name Moin for purchasing the motorcycle. The applicant approached said Moin and took the entire amount including that of the deceased. It is further case of the prosecution that, the deceased had gone to the house of the applicant/ appellant and demanded the money. At that time, the applicant/ appellant poured petrol on the deceased and ignited fire. Due to the burn injuries, he died. Our attention is drawn by learned counsel for the applicant/ appellant to paragraph No.33 of the impugned judgment. The same reads as under :

“33. It is true that, in second dying declaration (Exh.59) deceased has given some more statement that, he was having love affair with wife of accused and on 01/06/2019 he left the wife of accused at Partur and he was along with her throughout night on railway station. But about the incident, he repeated the same facts that when on 04/06/2019 at about 03.00 to 03.30 p.m. he had been to the house of accused for demanding the money of motorcycle transaction, at that time, accused on the point that, he is having affair with his wife, accused poured petrol on his person and set him on fire. Both the dying declarations of deceased are consistent throughout.”

4. Our attention is also drawn to the testimony of P.W.6, who is brother of deceased, wherein it has come as follows :

“He told me that when he went to the house of accused Dattarao Karhale to demand money, at that time accused Dattarao Karhale suspected that he came to meet his wife and hence accused Dattarao Karhale poured Petrol on his person and set in ablaze.”

5. From the above material on record, what is seen is that, there were illicit relations between the deceased and the wife of the applicant/ appellant. It is not in dispute that at the time of incident, the deceased himself had gone to the house of the applicant/ appellant where he was residing with his wife. Prima facie the possibility that the incident took place out of grave and sudden provocation cannot be ruled out. The applicant/ appellant is behind the bars for about 4 years. We see that the applicant/ appellant has arguable point as to whether the offence could be scaled down to Section 304 of the Indian Penal Code. In the result, we pass the following order :

**ORDER**

- (i) The Criminal Application is allowed.
- (ii) Pending the appeal, the sentence of imprisonment imposed upon the applicant by learned Sessions Judge, Vaijapur, District Aurangabad in Sessions Case No.115/2019 to stand suspended

and the applicant shall be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

**(NEERAJ P. DHOTE, J.)**

**(R.G. AVACHAT, J.)**

fmp/-