

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 829 OF 2024
IN
CRIMINAL APPEAL NO. 1119 OF 2023

Aref @ Gulam Mahmad Gulam Ahemad

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. N. S. Ghanekar – Advocate for the Applicant
Mrs. S. N. Deshmukh – APP for respondent/State
.....

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

DATED : 15TH APRIL, 2024

PER COURT : -

1. This is the Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Basmathnagar, vide Judgment and Order dated 18th September, 2023 passed in Sessions Case No. 05 of 2019, thereby convicting the Applicant for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.

2. Heard learned advocate for the Applicant and the learned Assistant Public Prosecutor for the respondent/State.

3. It is submitted by the learned advocate for the Applicant/Appellant that he is residing separately from the place of incident. He submits that the applicant is brother-in-law of the deceased and husband is the co-convict. He submits that the medical evidence does not support the case of the prosecution and the child i.e. deceased's daughter, who has been examined as the eye-witness to the incident is brought up witness. He submits that the Applicant is behind the bars for last five years and further submits that he has a good case on merits.

4. The application is opposed by learned Assistant Public Prosecutor. She submits that vessel shown between the legs of deceased would have fallen down had it been the case of suicide. She submits that there is a testimony of eye-witness, who is none other than the daughter of the deceased. The eye-witness has named the applicant as one of the accused who committed the offence in question. She submits that there is no reason to disbelieve her. She submits that the child has spared the grand-parents and, therefore, she is believable witness. She submits that the Application be rejected.

5. There is no dispute that the Applicant/Appellant is residing separately along with his wife and child from the place where the incident in question has taken place. The place of incident is the residence of the co-convict. It is further not in dispute that the statement

of the child eye-witness was recorded on the sixth (6th) day from the date of incident. The Applicant is behind the bars for more than 5½ years. There is no possibility that the Appeal would come up for final hearing in the near future. In these facts and circumstances of the case, we proceed to pass the following order.

ORDER

- [i] The Criminal Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Basmathnagar, vide Judgment and Order dated 18th September, 2023 passed in Sessions Case No. 05 of 2019, convicting the Applicant for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, is suspended during the pendency of the present Appeal.
- [iii] The Applicant/Appellant be released on bail on furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- [iv] Bail before the Trial Court.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde