



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

**CRIMINAL APPLICATION NO.997 of 2024
IN
CRIMINAL APPEAL NO.220 OF 2024**

Chandrakala Suryaji @ Suresh Yadav	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr.N.S.Ghanekar, Advocate for applicant
Mr.A.R.Kale, Addl. P.P. for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : JUNE 26, 2024

ORDER :-

This is an application for suspension of substantive sentence imposed by learned Sessions Judge, Osmanabad, in Sessions Case No.63 of 2000, vide judgment and order dated 02.02.2024, convicting the applicant/appellant and two other co-convicts for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, for committing murder of two persons by name, Ramesh and Ganesh.

2. The case of prosecution, in short, as seen from the police report, is as follows:-

The agricultural lands of the deceased and that of the applicant and co-convicts abut each other. The agricultural lands have common boundary. On 02.07.2020, at 06.30 p.m., the co-convict Suresh had disturbed the boundary of the agricultural field of deceased Ramesh and that resulted into quarrel between both the deceased - Ramesh and Ganesh on one hand and the applicant and the co-convicts, on the other. The quarrel resulted into assault. Due to the assault by the co-convicts, Ramesh and Ganesh suffered several injuries and died. The First Information Report (FIR) was lodged at Naldurg Police Station, Dist. Osmanabad, by Mahesh Yadav, brother of deceased Ganesh, after he was informed by Govind Yadav (PW 4). After investigation, the applicant and the co-convicts were charge-sheeted. The role attributed to the applicant is that she caught hold legs of both the deceased, which facilitated assault by the co-convicts. The trial Court, on appreciation of the evidence on record, passed the impugned judgment and order.

3. Learned counsel for the applicant submits that the FIR was registered on hearsay information. In the FIR, no role of catching hold of legs of the deceased, is attributed to the applicant. He submits that only in the supplementary statement, which was recorded after 13 days, the informant attributed the role to the

applicant that she caught hold of legs of the deceased at the time of incident. He submits that though two eye-witnesses are examined as PW 3 and PW 4, and in their substantive evidence, they deposed that the applicant caught hold of legs of both the deceased, their statements, which are shown to be recorded on 03.07.2020, were ante-dated. The Investigating Officer, who is examined as PW 11, in his evidence admitted that till 05.07.2020, there was no mention in the FIR or M.C.R. that accused Chandrakala (applicant) caught hold of legs of the deceased and threw soil. He submits that though the eye-witnesses in their evidence attributed the applicant the aforementioned role, the evidence of the Investigating Officer throw doubt in respect of the prosecution's case attributing the said role to the applicant. This Court granted bail to the applicant two months before passing of the impugned judgment and order. He submits that the applicant is a lady and behind bars for 3 years and 9 months. The appeal may not be heard in the near future and therefore, the applicant may be released on bail.

4. The application is vehemently opposed by learned APP for the respondent - State. He submits that the evidence on record includes the evidence of the eye-witnesses, showing that the applicant actively participated in the crime by holding legs of both

the deceased, which facilitated assault by the co-convicts. The statements of the eye-witnesses were recorded on the very next date. He submits that the FIR is not an encyclopedia. In the supplementary statement, the informant and the eye witnesses stated about the role played by the applicant, i.e. holding of legs of both the deceased. He submits that though the said role is not attributed to the applicant in the FIR, it can be inferred that she had caught hold of legs of the deceased as the co-convicts came from back-side and gave fatal blow on the deceased. The applicant instigated the co-convict for the assault. He submits that two persons lost their lives and therefore, the applicant does not deserve bail.

5. We have perused the evidence on record. PW 1 - Mahesh (informant) is not an eye-witness to the incident. He lodged the report on the basis of information given to him by the eye-witness. However, admittedly, in the FIR, no role is attributed to the applicant that she had caught hold of legs of both the deceased. The said role is attributed to the applicant by the informant in the supplementary statement, which was recorded on 15.07.2020, i.e. after 13 days of the FIR. It is true that the prosecution examined two eye-witnesses as PW 3 and PW 4, who, in their substantive evidence, deposed that

the applicant had caught hold of legs of the deceased and the co-convicts assaulted the deceased. Though their evidence show that their statements under Section 161 of the Code of Criminal Procedure were recorded on 03.07.2020, the Investigating Officer, who is examined as PW 11, in his evidence, admitted that till 05.07.2020, there was no mention in the FIR or M.C.R. that accused Chandrakala (applicant) caught hold of legs of the deceased and threw soil. From this, it can be inferred that till 05.07.2020, the applicant was not attributed with the role that she caught hold of legs of both the deceased. The applicant is woman. There is no possibility that the appeal would be heard in the near future.

6. In view of the above, we proceed to pass the following order:-

- (i) The application is allowed.
- (ii) During pendency of the appeal, the substantive sentence of imprisonment imposed against the applicant/appellant, by learned Sessions Judge, Osmanabad, vide judgment and order dated 02.02.2024 in Sessions Case No.63 of 2020, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, to stand suspended. The applicant/appellant be released on

bail, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one solvent surety each in the like amount.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP