



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

**CRIMINAL APPLICATION NO.1873 OF 2023
IN
CRIMINAL APPEAL NO.439 OF 2023**

Avinash Ramkisan Rajure
Vs.
The State of Maharashtra

..Applicant
..Respondent

Mr.A.M.Gaikwad, Advocate for applicant
Mr.G.A.Kulkarni, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : AUGUST 14, 2024**

ORDER :-

This is an application for suspension of sentence imposed against the applicant/appellant vide judgment and order dated 10.03.2023, passed by learned Sessions Judge, Beed, in Sessions Case No.41 of 2021, convicting the applicant/appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code and sentencing him to suffer life imprisonment and R.I. for one, respectively, with default stipulation.

2. The case of prosecution, in brief, is that the deceased (victim), who was married with some other person, was in live-in relationship with the applicant. On 13.11.2020, the applicant and the victim travelled together on motorcycle. Fuel was filled in the

motorcycle at one petrol pump. Thereafter, while on way to their village, they slept in an agricultural field since it was night. In the night, the applicant throttled and set on fire the victim and fled away. In the morning on the next day, one witness saw the victim seeking help. The matter was informed to the police. The victim was admitted to hospital. The crime was registered. The applicant was charge-sheeted.

3. Learned counsel for the applicant submits that though the case is based on oral and written dying declarations, the medical papers show that the condition of the (victim) deceased was not such that she was able to give statement. He submits that except this, there is no evidence against the applicant/appellant. He, therefore, prays for allowing he application.

4. The application is opposed by learned APP. He submits that there are two oral and one written dying declarations. He submits that the witnesses to whom the oral dying declarations were made are independent persons. He submits that there is medical history of burning and the concerned Doctor had certified about fitness of the deceased to give statement. He, therefore, prays for rejection of the application.

5. We have perused the evidence on record. Admittedly, there are two oral dying declarations of the deceased to independent persons, wherein, she stated against the applicant that he throttled and set her on fire. To add to this, there is written dying declaration recorded by the police in the hospital where the deceased was admitted. The written dying declaration corroborate the case of the prosecution that the applicant throttled and set on fire the deceased. The written dying declaration shows that it was certified by the concerned Doctor about fitness of the deceased to give statement. There is evidence of an employee of the petrol pump, whereat the applicant filled in petrol in the motorcycle, who deposed that the applicant and deceased were seen at the petrol pump in the afternoon on 13.11.2020. There is nothing to show that the applicant had parted ways from the deceased.

6. In view of the above evidence on record, in our considered opinion, this is not a fit case to suspend the sentence. The application is, thus, rejected.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP