



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

**CRIMINAL APPLICATION NO.2553 OF 2024
IN
CRIMINAL APPEAL NO.563 OF 2024**

Ananda Atmaram Koli ..Applicant
vs.
State of Maharashtra and anr. ..Respondent

Mr.J.V.Patil, Advocate for applicant
Mrs.U.S.Bhosale, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : AUGUST 23, 2024**

ORDER :-

This is an application for suspension of substantive sentence imposed against the applicant/appellant, vide judgment and order dated 01.04.2024, passed by learned Addl. Sessions Judge, Amalner, in Sessions Case No.96 of 2022, convicting and sentencing the applicant/appellant for the offences punishable under Sections 302, 323, 504, and 201 r/w. 34, Section 120-B of Indian Penal Code and Section 3 and 7 r/w. 25 Arms Act.

2. The case of prosecution, as seen from the papers on record, is that deceased - Varsha and Rakesh were in love. Since they belonged to different castes, their respective family members were opposing the relationship. Out of the said love-affair, the incident took

place on 12.08.2022. Deceased Rakesh had gone to the house of the deceased Varsha. The family members of Varsha took both of them, i.e. Rakesh and Varsha, to one place (Varad phata) and killed them. The offence was registered against thirteen persons. After the trial, seven accused persons came to be convicted.

3. It is submitted by learned counsel for the applicant/appellant there there is no evidence to show the involvement of the applicant in the crime. He submits that the only evidence against the applicant is phone call details (C.D.R.). He submits that the sentence of co-convicts - Nitin and Pavan has been suspended, since it was a term-sentence. He submits that even if the evidence on record is accepted as it is, the conviction recorded against the applicant would not be maintainable in the eye of law. He, therefore, prays for allowing the application.

4. The application is opposed by learned APP. She submits that the evidence on record goes to show that all the circumstances put forth by the prosecution, have been established. She submits that the trial court has passed a detail judgment and rightly convicted the applicant. She submits that phone-call details show that the applicant and the co-convicts were in contact with each other before and after the incident.

5. There is no dispute that the only circumstance against the applicant is the phone-calls with co-convict Tushar, who is none other but the son of the applicant. Admittedly, the applicant was not present at the spot of the incident. It is debatable, whether, on the basis of the phone-calls between the applicant and his son, conviction would be maintainable. The applicant was on bail during trial. There is no possibility that the appeal would be heard in the near future. He is behind the bars for two and half years.

6. Hence, we 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 Addl. Sessions Judge, Amalner, in Sessions Case No.96 of 2022, convicting and sentencing the applicant/appellant for the offences punishable under Sections 302, 323, 504 and 201 r/w. 34, and Section 120-B of Indian Penal Code and Sections 3 and 7 r/w. 25 Arms Act, to stand suspended.

(iii) The applicant/appellant be released on bail, on 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.]

KBP