



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

**CRIMINAL APPLICATION NO. 1797 OF 2021
IN
CRIMINAL APPEAL [ST] NO. 5429 OF 2021**

Babasaheb s/o Mithu Shinde

....Applicant

Versus

The State of Maharashtra & Anr.

....Respondent

.....

Mrs. Suvarna M. Zaware – Advocate for the Applicant
Mrs. V. S. Chaudhari – APP for respondent no.1/State
Mr. Joslyn Menezes – Advocate (appointed) for respondent no. 2

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

DATED : 08TH FEBRUARY, 2024

PER COURT : -

1. This application is filed for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Ahmednagar, vide Judgment and Order dated 21.02.2018 passed in Sessions Case No. 391/2016.

2. Heard learned advocate for the Applicant/Appellant, learned APP for the State and the learned advocate for the victim-mother. Perused the papers.

3. Case of the prosecution is that the deceased was the wife of the Applicant/Appellant and her dead body was found in a well in a decomposed state. It is further the case of prosecution that the Applicant/Appellant was absconding for a period of six months after the death. Perusal of the impugned Judgment show and which is not in dispute, that the case is based on circumstantial evidence. The observations in paragraph no. 29 of the judgment passed by the trial Court show that the DNA profiling was done and there was no matching of DNA of the parents of suspected deceased Sonu and the dead body. It is observed that the blood group of the deceased was not determined by taking blood sample from the dead body. It is further observed that a tooth of the dead body was sent for chemical analysis, however, there was no DNA profiling as such. The impugned Judgment show that the only circumstance which had weighed with the trial Court for convicting the Applicant/Appellant was the seizure of blood stained saree, axe and stone from the hut which was situated in an isolated place and the photograph of Sonu with the Applicant/Appellant. However, the Chemical Analyzer's reports are not on record.

4. Admittedly, the Applicant/Appellant was a labourer and we *prima facie* find merit in the submission of the learned advocate for the Applicant/Appellant that prosecution cannot escape from its duty to show the presence of Applicant/Appellant at the scene of offence on the

day of incident and only therefore the burden under Section 106 of the Indian Evidence Act will come on the Applicant/Appellant.

5. The Appeal is of the year 2021 and it is not likely to come up for final hearing in the near future. In this view of the matter, we are inclined to pass the following order : -

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence awarded to the applicant by the learned Additional Sessions Judge, Ahmednagar, vide Judgment and Order dated 21.02.2018 passed in Sessions Case No. 391/2016, thereby convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code and sentencing to suffer imprisonment for life and pay fine of Rs. 50,000/-, in default, suffer simple imprisonment for one year and for offence punishable under Section 201 of the Indian Penal Code and sentencing to suffer rigorous imprisonment for three years and pay fine of Rs. 10,000/-, in default, to suffer further simple imprisonment for three months, is suspended during the pendency of the Appeal.
- (iii) The Applicants be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only).
- (iv) Bail before the Trial Court.
- (v) The Applicant shall not change his residential address without intimation to the concerned Police Station.

- (vi) The fees of the learned advocate appointed for representing the respondent no. 2, is quantified at Rs. 8,000/- (Rupees Eight Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

6. Criminal Application is accordingly disposed of.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde