



CORRECTED ORDER VIDE SPEAKING TO MINUTES ORDER DT. 04th SEPTEMBER, 2024

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

**CRIMINAL APPLICATION NO. 3043 OF 2024
IN CRIMINAL APPEAL NO. 680 OF 2024**

Ravindra Ananda Koli

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

Mr. J.V. Patil, Advocate for applicant

Ms. U.S. Bhosle, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
DATE : 30th AUGUST, 2024

PER COURT :

1. This is an application for suspension of substantive sentence imposed against the applicant, vide judgment and order dated 01st April, 2024, passed by learned Addl. Sessions Judge, Amalner, in Sessions Case No.96 of 2022, convicting and sentencing the applicant for the offences punishable under Sections 302, 323, 504, 201 and 120-B read with Section 34 of Indian Penal Code and Sections 3 and 7 read with Section 25 of the 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 their relationship. Out

of the said love-affair, the incident took place on 12th August, 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 that the only evidence against the applicant is that he was in telephonic contact with the co-convicts i.e. Tushar and Ananda and he burnt the clothes of co-accused which they were wearing at the time of the incident. He submits that this Court in Criminal Application No. 2553 of 2024 has granted bail to co-convict - Ananda Atmaram Koli, who was more or less similarly situated with the present applicant. He submits that there is no evidence to show the actual involvement of the applicant in the crime.

4. The application is opposed by learned A.P.P. She submits that the evidence on record goes to show that the applicant was in telephonic contact with the co-convicts Tushar and Ananda. She submits that the evidence on record shows that the applicant burnt the clothes of the co-accused which they were wearing at the time of incident and the said spot was discovered under Section 27 of the Evidence Act. She further submits that one of the charge was of conspiracy and this evidence is sufficient to show involvement

of the appellant in the crime. She, therefore, urged for dismissal of the application.

5. Admittedly, there is no dispute that there is no evidence to show that the applicant was present at the spot of the incident. Evidence against the applicant is that he was in telephonic contact with the co-accused. There is no evidence as to what was the talk between them. Therefore, it would be debatable whether the charge of conspiracy could be made out. With regard to destroying the clothes of co-accused, the trial Court has discussed the same in paragraph nos. 327 to 330. Paragraph no. 330 thereof reads as under:-

“330. Here, I want to bring on record that, in entire panchanama as well as in the oral statement of this witness, he never stated that pant of Bharat Raising was also given and that pant has been destroyed. The clothes are not specified which are destroyed. It does not mean that, every clothes worn by every accused at the time of commission of offence were destroyed. As already stated above, culpable part of Section 27 of the Evidence Act is not acceptable. In the entire evidence, there is no culpability statement. The only statement that deceased Shantaram told Ravindra Ananda to destroy the clothes worn by accused at the time of commission of offence. Deceased Shantaram never stated that those clothes were stained with blood or not. Only some clothes were given to Ravindra Ananda and he has destroyed it.”

6. If at all the said evidence under Section 27 of the Evidence Act is considered, whether it would lead to conviction is again a debatable point. The applicant was on bail during trial. There is no possibility that the appeal would be heard in near future. Hence, we proceed to pass the following order :-

ORDER

- (I) Criminal application is allowed.
- (II) Pending the appeal, the execution of substantive sentence of imprisonment imposed against the applicant vide judgment and order dated 01st April, 2024, passed by learned Addl. Sessions Judge, Amalner, in Sessions Case No.96 of 2022, convicting and sentencing the applicant for the offences punishable under Sections 302, 323, 504, 201, 120-B read with Section 34 of Indian Penal Code and Sections 3 and 7 read with Section 25 of the Arms Act, to stand suspended.
- (III) The applicant be released on bail on his 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.)

SSD