



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

**CRIMINAL APPLICATION NO. 3655 OF 2024
IN CRIMINAL APPEAL NO. 770 OF 2024**

Shankar Sopan Shikare

....Applicant

VERSUS

The State of Maharashtra and Anr.

.....Respondents

.....

Mr. Rahul R. Karpe, Advocate for Applicant

Mrs. U. S. Bhosale, APP for Respondent No.1 – State

Mr. Chaitanya Deshpande, Advocate for Respondent No.2

....

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

DATE : 26.09.2024

PER COURT :

1. This is an Application for suspension of substantive sentence imposed upon the Applicant / Appellant by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar, in Sessions Case No.250/2019, vide Judgment and Order dated 09/08/2024, convicting the Applicant / Appellant for the offences punishable under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentencing him to suffer life imprisonment and to pay fine of Rs.5000/- [Five Thousand], in default, to suffer simple imprisonment for six [6] months.

2. Heard the learned Advocate Mr. Karpe for the Applicant / Appellant, Mrs. Bhosale, learned A.P.P. for Respondent No.1 / State and Mr. Deshpande, learned Advocate for Respondent No.2 / Informant.

3. In nutshell, the case of Prosecution is that, the grand-father of the Applicant / Appellant [Accused] committed suicide four [4] years prior to the date of incident and the Deceased was responsible for the said suicide, therefore, the Applicant committed his murder in the evening around 8.00 p.m. on 02/03/2019 inside the Temple at village Kharda. When the wife of Deceased heard hue and cry from the Temple, she and her son proceeded in that direction and saw the Applicant running from the Temple. The Deceased was referred to the Hospital. The wife of Deceased lodged the report and the Crime was registered. The Applicant was found at the distance of four [4] kilometers in an injured condition and he was apprehended. After completion of investigation, the Applicant was Charge-sheeted, tried and convicted.

4. It is submitted by the learned Advocate for the Applicant that, though the Applicant was known to the wife and son of the Deceased, who are the star witnesses of the Prosecution, report is lodged against the unknown person. He submits that, except the evidence in respect of sniffer dog, there is no evidence to connect the Applicant with the Crime. He submits that, the Applicant was on bail during trial. He submits that, the Application be allowed.

5. The Application is opposed by the learned APP for Respondent No.1 - State and learned Advocate for Respondent No.2 - Informant. They submit that, since it was the night time, the wife and son of the Deceased could not properly identify the Applicant and therefore, he is not named in the report. They submit that, the Applicant was traced as the sniffer dog had proceeded towards him after the dog was made to sniff the Sandal. They submit that, the weapon used in the Crime was found near the place where the Applicant was found in an injured condition. They submit that, in

the supplementary statement, the wife of Deceased, who lodged the report, names the Applicant. They further submit that, there are witnesses, who had seen the Applicant in the Temple before the Crime. They submit that, the clothes, which the Applicant was wearing at the time of incident, have been mentioned in the statement by the witnesses. They submit that, the Application be rejected.

6. We have gone through the evidence on record. It is clear from the evidence of the wife and son of Deceased that, the Applicant was known to them since he was on visiting terms with the Deceased. The incident had taken place inside the Temple and the evidence on record goes to show that, there was sufficient light in the vicinity of Temple. However, the Informant, who is the wife of Deceased and knows the Applicant, who claims to have seen the assaulter running from the spot, after she reached there on hearing hue and cry, did not name the Applicant in her report. The report is against unknown person. The supplementary statement of the Informant and the statement of her son wherein they named the Applicant, were recorded after the Applicant was apprehended. The only evidence against the Applicant is that, he was traced by the sniffer dog, which is admittedly a weak piece of evidence. The panchas for the Dog Squad have not supported the case of Prosecution. Admittedly, the Dog Squad Handler has not been examined. Since the knife was found at the place where the Applicant was found, it would not be the discovery under Section 27 of the Evidence Act, 1872. The blood group of Deceased and that of the Applicant is similar and therefore, the CA report would not be of much help to the Prosecution. 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) The Criminal Application is allowed.
- (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar, in Sessions Case No.250/2019, vide Judgment and Order dated 09/08/2024 on the Applicant / Appellant, namely, Shankar Sopan Shikare, is suspended during the pendency of the present Appeal.
- (iii) The Applicant / Appellant be released on bail on furnishing P.R. Bond of Rs.15,000/- [Rupees Fifteen Thousand Only] with one surety in the like amount.
- (iv) Bail before the Trial Court.
7. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer