



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3732 OF 2024
IN
CRIMINAL APPEAL NO. 787 OF 2024

Santosh Dhondiram Ghadage

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. S.S. Deshmukh a/w Mr. S.N. Jawale, Mr. Y.G. Birajdar and Mr. N.S. Shinde, Advocate for applicant

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

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 10th OCTOBER, 2024

PER COURT :

1. The applicant is seeking suspension of sentence imposed by learned Sessions Judge, Latur in Sessions Case No. 75 of 2022 vide judgment and order dated 29th July, 2024, thereby convicting him for the offence punishable under Sections 302, 201, 120(B) read with Section 34 of the Indian Penal Code.

2. The case of the prosecution in brief is as under :-

Deceased – Hanumant Vyankat Yerwe was the son of informant – Vyankat Narsing Yerwe. The deceased was having affair with co-convict Shabana i.e. Accused No.1. The deceased did not return home in the night of

12th December, 2021. He came to know that the deceased was lastly seen with the convicts, and therefore, he lodged the report and accordingly Crime No. 549 of 2021 came to be registered with Chakur Police Station. The dead body of Hanumant was found on the next day i.e. on 13th December, 2021 near an agricultural field. The dead body was referred to postmortem. The cause of death was revealed as 'head injury'.

3. It is submitted by learned counsel for the applicant that there is no concrete evidence against the applicant to show his involvement in the crime. He submits that the evidence of PW 2 – Tukaram, who is the star witness of the prosecution, nowhere shows that he has lastly seen the deceased with the applicant. He submits that this witness was closely related with the deceased. He submits that though chilly powder was found on the appellant, it would not of any assistance as no such powder was found on the deceased. It is submitted that appeal would not be heard in near future, and therefore, the application be allowed.

4. Application is opposed by learned A.P.P. He submits that evidence of PW 2 – Tukaram shows that he was aware that the deceased was seen with the co-convict and he identified the applicant in test identification parade. He submits that learned trial Court has rightly appreciated the evidence and the applicant is not entitled for bail.

5. The case is based on circumstantial evidence. We have perused the evidence of PW 2 – Tukaram, who is the main witness of prosecution. Though he deposed that the applicant and co-convicts have committed murder of Hanumant, his evidence nowhere shows source of his knowledge in respect of homicidal death of Hanumant. Prima facie it appears that his evidence is hearsay in nature. Though his evidence shows that he identified the applicant in test identification parade, admittedly no description was given by him in previous statement about the suspects. There is no other evidence on record to connect the applicant with the crime. The appeal would not come up for hearing in near future. Applicant is in jail close to three years.

6. In view of above, the execution of substantive sentence of imprisonment against the applicant to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

7. Criminal application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)