



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

**CRIMINAL APPLICATION NO.2607 OF 2021
IN
CRIMINAL APPEAL NO.561 OF 2021**

Azizabi Nisar Ahemed	..Applicant
Vs.	
State of Maharashtra	..Respondent

Mr.N.L.Choudhari, Advocate for applicant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : NOVEMBER 18, 2024**

ORDER :-

Heard learned counsel for the applicant and learned APP for the respondent - State.

2. This is an application for suspension of sentence imposed against the applicant/appellant by learned Addl. Sessions Judge, Dhule, in Sessions Case No.96 of 2013, by judgment and order dated 07.10.2021. Vide the impugned judgment and order, the applicant/appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer imprisonment for life with fine of Rs.2,000/-, in default, to undergo simple imprisonment for one month.

3. The case of prosecution, in short, is that deceased – Tabassum was daughter-in-law of the applicant/appellant. After marriage, Tabassum was illtreated. On 29.07.2012, the applicant/appellant poured kerosene on the person of Tabassum and set her on fire. She was hospitalised. During treatment, her four dying declarations came to be recorded. On scrutiny of the evidence on record, the trial court passed the impugned judgment and order

4. Learned counsel for the applicant/appellant submits that during trial, the applicant/appellant was on bail. At present, she is 60 years of age. The incident is of year 2012. Twelve years have passed since then. In the oral dying declaration, the deceased informed her that the applicant/appellant poured kerosene on her person and the husband set her ablaze; whereas, in the first three written dying declarations, she has implicated the applicant/appellant; and in the first three written dying declarations, she has implicated all the family members. It is submitted that the paper book is not yet ready and therefore, the appeal will not be listed for final hearing. He submits that the application may be allowed.

5. The application is opposed by learned APP. He submits that though in the evidence of the mother of deceased, it has come

on record that the deceased was unable to read and write in Marathi language, the evidence of the police constable shows that he had inquired with the deceased in Marathi language and she replied in Marathi. It is submitted that in the three dying declarations, the deceased has implicated the applicant. Learned trial court has, therefore, rightly convicted and sentenced the applicant. He, therefore, prays for rejection of the application.

6. The impugned judgment show and on which there is no dispute that, there was one initial oral dying declaration made by the deceased to her mother, who is examined as PW 1. The evidence of PW 1 shows that in the oral dying declaration, the deceased informed her that the applicant poured kerosene on her person and her husband has set her ablaze. In the fourth dying declaration, the deceased named all the family members, i.e. husband, applicant (mother-in-law), father-in-law and brother-in-law; whereas, in the third dying declaration, the deceased attributed the entire role to the applicant/appellant. This shows inconsistencies in the oral dying declaration as well as the written dying declarations. Admittedly, the husband and two accused persons have been acquitted by the trial court and the State has not preferred an appeal against their acquittal.

7. Though the evidence of the police constable, who recorded the dying declarations of the deceased, shows that the deceased stated in Marathi language, the evidence of PW 1, who was the mother of the deceased, shows that the deceased was able to understand Hindi and Urdu languages only. This evidence, prima facie, gives blow to the prosecution's case in respect of the written dying declarations. If they are excluded, what remains is the oral dying declaration, which is a weak piece of evidence, wherein she also implicates the husband.

8. The applicant/appellant was on bail during trial. Through the Record and Proceedings are received from the trial court, paper book is not ready and therefore, there is no possibility that the appeal would be heard in the near future. The applicant/appellant is 60 years old woman. She is behind the bars for 3 years and 7 months. In this view of the matter, we allow the application in terms of the following order:-

9. 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, Dhule, in Sessions Case No.96 of 2013,

convicting and sentencing the applicant/appellant for the offence punishable under Section 302 of Indian Penal Code, 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