



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

**CRIMINAL APPLICATION NO. 4003 OF 2024
IN APPEAL/861/2024**

Somnath S/o Mohan Waghmare
Age: 30 years, Occu.: Labour,
R/o. Loni, Tq.Udgir, Dist.Latur.

Presently in jail.

Being in jail, through his mother

Kantabai w/o Mohanrao Waghmare
Age; 65 years,
Occu.: Household,
R/o.Loni, Tq.Udgir, Dist.Latur.

..Applicant

Versus

State of Maharashtra
Through Police Station, Udgir Gramin,
Tq.Udgir, Dist.Latur.

..Respondent

...

Advocate for Applicant : Mr.D.A.Mane h/f. Mr. Milind Patil
APP for Respondent : Mrs.Ashlesha S.Deshmukh

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 04 OCTOBER, 2024

ORDER :

1. In this application there are prayers for suspension of sentence awarded by learned Additional Sessions Judge, Udgir, Dist.Latur in Sessions Case No.52 of 2019 and also for grant of bail during pendency of appeal.

2. It is pointed out that applicant was tried by learned Additional Sessions Judge, Udgir, Dist.Latur on the charge of commission of offence under Sections 307, 306, 323, 504 of the Indian Penal Code vide above Sessions case and was held guilty for offence under Sections 306 and 323 of the IPC. Learned Counsel for applicant pointed out that suicide is by immolation. That there are dying declarations but they are stereotype. That merely because of quarrel, in anger deceased set herself on fire. He pointed out that at the time of episode of burns, applicant was not present. However, still his guilt is recorded on the charge of abetment to commit suicide. Therefore, above judgment passed by learned trial Court is challenged by filing appeal. However, appeal is of 2024. There is a good case on merits and he has every hope of success. That moreover, applicant was on bail during trial and hence, learned Counsel prays for above reliefs of both suspension of sentence and grant of bail.

3. While opposing the above application and relief, learned APP pointed out that there is overwhelming evidence that husband subjected deceased to physical and mental cruelty. That he consistently beat her. That even prior to the burns, there was

beating, suspicion of character. Therefore, only because of such ill-treatment, suicide is committed and hence, relief is opposed.

4. Heard both sides. Perused the papers.

5. Learned trial Judge, who conducted Sessions Case No.52 of 2019, vide judgment and order dated 07-08-2024, held applicant guilty for offence under Sections 306 and 323 of the IPC and awarded sentence of five years and six months respectively. It seems that applicant and deceased are husband and wife. Their marriage and cohabitation is said to be of 7-8 years. Dying declaration of victim recorded on 09-12-2018 shows that she reported about quarrel between husband on petty count. Subsequently, she reported that since one and half months, husband suspected her fidelity, he used to get drunk and subjected her to physical and mental cruelty and abused her. She also reported that on 08-12-2018, her husband came home drunk at 03:00 p.m., used abusive language and left the house. Thereafter, she stated that getting angry due to it and getting fed up of harassment, she poured kerosene and set herself ablaze.

Thus, her such dying declaration *prima facie* shows that

applicant was not in the house when she immolated herself, though there are allegation that previous to it he abused her. The aspects of inducement and abetment would be dealt in appeal. Admittedly, applicant was on bail during trial.

Therefore, in view of above material, relief as prayed requires to be granted.

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant - Somnath S/o Mohan Waghmare in Session Case No. 52 of 2019 by the learned Additional Sessions Judge, Udgir on 07-08-2024, stands suspended till the final hearing and disposal of Criminal Appeal No.861 of 2024.
- (iii) The applicant be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with two solvent sureties in the like amount each.
- (iv) The applicant shall not commit any criminal activity.
- (v) The applicant shall remain present before the learned trial Judge once in six months, till final

hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

- (vii) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- (viii) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE