



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

**CRIMINAL APPLICATION NO. 4282 OF 2024
IN CRIMINAL APPEAL NO. 931 OF 2024**

Shabana Vajir Masuldar

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....

Mr. Pralhad C. Bhagure a/w Mr. Deshmukh Naseembanu Iliyas and
Mr. Eknath D. Gajile, Advocate for Applicant

Mr. S. D. Ghayal, Addl. PP for Respondent – State

Mr. V. P. Golewar, Advocate for the Informant

.....

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

DATE : 28.11.2024

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 29/07/2024, thereby convicting her 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 the Applicant i.e. Accused No.1. The Deceased did not return home in the night of 12/12/2021. He came to know that, the Deceased was lastly seen with the Applicant, and therefore, he lodged the report and accordingly Crime No.549/2021 came to be registered with Chakur Police Station. The dead body of Hanumant was found on the next day i.e. on 13/12/2021 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 the learned Advocate for the Applicant that, the only evidence against the Applicant is of last seen together with the Deceased. He submits that, though one packet and burnt clothes of the Deceased are claimed to have been discovered at the instance of the Applicant, the same are not established to be that of the Deceased. He submits that, admittedly, the Applicant and Deceased were in relation since last ten [10] years from the incident and therefore, finding of the articles, if any, will not be an incriminating circumstance. He submits that, the co-Accused are granted bail. The Applicant is a woman, having three [3] minor children. Hence, the Application be allowed.

4. Application is opposed by the learned Addl. PP and the learned Advocate for the Informant. They submit that, the Applicant had the motive to commit the Crime and by hatching the conspiracy with the co-Accused, the Crime has been committed. The Applicant was lastly seen with the Deceased and there is no evidence as to when she has parted with the Deceased. The packet and burnt clothes of the Deceased were seized under Section 27 of the Evidence Act at the instance of the Applicant from her residence. This evidence shows the involvement of the Applicant in the Crime. Hence, the Application be rejected.

5. It is needless to state that, the two [2] co-convicts, who are male, have been granted bail. The evidence against the Applicant is of last seen with the Deceased. The time gap between the last seen and finding of dead body is about twenty [20] hours. There is no evidence to establish that, the packet and burnt clothes discovered at the instance of the Applicant were that of the Deceased only. Except this, there is no evidence against the Applicant. She is a woman and behind the bars for a period little less for three [3]

years. She is having three [3] minor children. There is no likelihood that, the Appeal would come up for final hearing in near future. Hence, we proceed to pass the following order:

ORDER

- (i) The Criminal Application is allowed.
 - (ii) The substantive sentence imposed by learned Sessions Judge, Latur, vide Judgment and Order dated 29/07/2024, on the Applicant / Appellant, namely, Shabana Vajir Masuldar, 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.
6. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer/Nov-2024