

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

918 CRIMINAL APPLICATION NO. 3764 OF 2023
IN APEAL/938/2023

Rambhau S/o Tukaram Holambe

.. Applicant

Versus

The State of Maharashtra

..Respondent

Advocate for Applicant : Ms. Poonam V. Bodke Patil
Addl. PP for Respondent / State : Shri. S. D. Ghayal

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : January 31, 2024

PER COURT :-

1. This is the Application for suspension of substantive sentence awarded by the learned Additional Sessions Judge, Ambajogai in Sessions Case No. 05/2016 vide Judgment and order dated 31.08.2023 thereby convicting the Applicant / Appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for Life with fine of Rs.5000/-, in default to suffer imprisonment for six (6) months.

2. Heard learned Advocate for the Applicant / Appellant and learned Addl. PP for the State. Perused the relevant papers.

3. Learned Advocate for the Applicant / Appellant pointed out

the dying declaration of the deceased recorded by the police. Learned Advocate contends that the sister of deceased was present, when dying declaration of the deceased was recorded, therefore, there is possibility of tutoring. She further submits that thumb impression of the sister of deceased was taken on the dying declaration. She submits that since the dying declaration is under the cloud of doubt, the sentence of the applicant be suspended during the pendency of the Appeal.

4. Learned Addl. P. P. submits that the deceased was in a fit state of mind when her dying declaration was recorded. Hence, he prays for rejection of the Application.

5. It is the Prosecution's case that the Applicant / Appellant who is the husband of deceased, set her on fire by pouring kerosene since he was suspecting her character.

6. It is not discernible as to why the thumb impression of the victim's sister was taken on dying declaration. The dying declaration itself show that the Applicant / Appellant had doused the fire and admitted the deceased to the hospital. The death of the Victim is after 14 days from the date of the incident. The cause of death as per the Post-mortem Report is '*Septicemia due to mixed thermal burns.*' It is not disputed that during the trial, the Applicant was on bail. There is

no possibility that the Appeal would come up for final hearing in the near future. In this view of the matter, we proceed to pass the following order:

ORDER

- (i) The Application is allowed.
 - (ii) The substantive sentence imposed by the learned Additional Sessions Judge, Ambajogai in Sessions Case No. 05/2016 vide Judgment and order dated 31.08.2023 on the Applicant / Appellant, namely, Rambhau S/o Tukaram Holambe, 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.
 - (v) The Applicant / Appellant shall not change his residential address without intimation to the concerned Police Station.
7. Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP