



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

**907 CRIMINAL APPLICATION NO. 4503 OF 2024
IN APEAL/989/2024**

Krushna Sanjay Surve
VERSUS
The State Of Maharashtra

...
Mr. Nilesh S. Ghanekar - Advocate for Applicant
Mr. S. D. Ghayal – Addl.PP. for Respondent/State
...

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

DATED : 28TH NOVEMBER, 2024

PER COURT : -

1. This is the Application for suspension of substantive sentence imposed by the learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar, vide Judgment and Order dated 05.11.2024 passed in Sessions Case No. 80 of 2022, convicting the Applicant i.e. Accused No. 1 for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. The case of the Prosecution in brief, as seen from the impugned Judgment, is that the Applicant and acquitted Accused no. 3 were in relationship. Accused no. 3 was the wife of Deceased - Vishal. By hatching conspiracy, the Applicant and the acquitted two Accused have committed the murder of Deceased Vishal, causing head injury

with the Pipe. The dead body of Deceased Vishal was found on the Kharda - Jamkhed road in the early hours of 14.05.2022. The dead body was noticed by the villagers. They informed the concerned Police Station and the brother of the Deceased i.e. PW1 – Sushan Surve, lodged report against unknown persons. During investigation, acquitted Accused and the Applicant came to be arrested. The Charge-sheet was filed on completion of investigation. The learned trial Court acquitted Accused nos. 2 and 3 and convicted the Applicant i.e. Accused No. 1.

3. It is submitted by the learned Advocate for the Applicant that only evidence against the Applicant is that of Motive which is hearsay in nature, and discovery which is completely shattered in the evidence of the panch witnesses and the Investigating Officer. He took us through the evidence of PW1 – Sushan Surve and PW18 – Yogesh Walunjkar in respect of Motive, and the evidence of panch witnesses PW10 – Gorakh Shikare and PW21 – Sambhaji Gaikwad – Investigating Officer on the point of discovery & seizure. He submits that the Pipe was found in the water and it is strange as to how the blood stains were noticed on the said Pipe. He submits that the Applicant was 19 years of age at the time of incident and is behind the bars for more than 2 and ½ years. It is submitted that the Applicant has good case on merits and has fair chances of acquittal. He submits that the Application be allowed.

4. The Application is opposed by the learned APP and the learned Advocate for the Informant, who is assisting the Prosecution. They submit that there was Motive to commit the Crime, which has been established by examining PW1 – Sushan Surve and PW18 – Yogesh Walunjkar. There is discovery of rod, pant, pocket and handkerchief at the instance of the Applicant. They submit that the acquitted Accused No. 3 who had given the confessional statement that, she was presented with a mobile phone by the Applicant and it shows that, they were in relationship. They submit that the said evidence is sufficient to confirm the conviction. They submit that the Application be rejected.

5. Admittedly, the argument of both the sides is that the circumstances relied upon by the Prosecution are the Motive & Discovery and Seizure of articles at the instance of the Applicant. The evidence of PW1 – Sushan Surve and PW18 – Yogesh Walunjkar shows that they learnt about the relationship between the Applicant and the acquitted Accused No. 3. This clearly shows that the evidence in respect of Motive is in the nature of hearsay. As regards the discovery and seizure of the aforesaid articles i.e. rod, pocket, pant and handkerchief are concerned, the cross-examination of panch witnesses show that the Police Officer gave the information of places where they were to go. This shakes his evidence given in the examination-in-chief in respect of

memorandum statement and discovery. As can be seen from the evidence of PW21 – the Investigating Officer, before calling the panchas he was having the knowledge (word used i.e. ‘idea’), that the weapon will be found in the lake, one day before. It is further seen from his evidence that, the policeman along with other persons, were already present on the spot of recovery. With this evidence on record, the case of the prosecution in respect of discovery and the seizure cannot be said to be well founded. As regards the evidence of seizure of motorcycle on which the piece of flesh/brain matter was found, there is no evidence to connect the said motorcycle with the Applicant. As regards the confessional statement of Accused No. 3 is concerned, it would be inadmissible in evidence. With this type of evidence on record, we find *prima facie* merit in the contention of the learned Advocate for the Applicant that the Applicant is having good case on merits. Hence, the following order is passed.

ORDER

- [i] The Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar, vide Judgment and Order dated 05.11.2024 passed in Sessions Case No. 80 of 2022, 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]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde