



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

**CRIMINAL APPLICATION NO. 4601 OF 2024
IN CRIMINAL APPEAL NO. 891 OF 2024**

Laxman S/o Babruwan Dange

.....Applicant

VERSUS

The State of Maharashtra

.....Respondent

.....

Mr. Raviprasad Kalyanrao Ashtekar, Advocate for Applicant

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

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

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**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 him 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 co-convict Shabana 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 Accused No.1, 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 co-Accused i.e. Accused No.2 – Santosh Dhondiram Ghadage, who is attributed with similar role as that attributed to the Applicant, has been granted bail by the order dated 10/10/2024 in Criminal Application No.3732/2024. He submits that, the Applicant was not identified in Test Identification Parade [TIP], therefore, his case stands on better footing than the said co-Accused whose sentence has been suspended. He submits that, the Application be allowed.

4. The Application is opposed by the learned APP and learned Advocate for the Informant. They submit that, there is no dispute that, Accused No.2 - Santosh Dhondiram Ghadage has been granted bail by suspending his sentence. The evidence against the Applicant and also the said Accused No.2 is that, they had withdrawn the amount from the ATM by using the ATM Card of the Deceased. They fairly submit that, the CCTV footages of the ATM were not accompanied with the certificate under Section 65-B of the Evidence Act and the learned Trial Court has discarded the said piece of evidence. They submit that, Application be rejected.

5. The case is based on circumstantial evidence. The Applicant was not identified in TIP. The role attributed to the Applicant and co-convict i.e. Santosh to whom the bail is granted by suspending his sentence stands on the same footing. The learned Trial Court has discarded the evidence in the nature of CCTV footages. The Appeal would not come up for hearing in near future. The Applicant is behind the bars for the period near about three [3] years.

6. In view of the above, the execution of substantive sentence of imprisonment against the Applicant to stand suspended pending the Appeal. The Applicant be released on his executing P. R. Bond in the sum of Rs.15,000/- with one surety in the like amount.

7. Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer/Nov-2024