



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4005 OF 2023
IN
CRIMINAL APPEAL NO. 1168 OF 2023

Pravin @ Pandurang S/o Dhanraj Thombre
Age : 20 Years, Occu : Agri,
R/o Thombrewasti, Umachiwadi,
Tq. Bhoom, Dist. Osmanabad.
(At present is in Jail)

... Appellant
(Orig. Accused No. 3)

Versus

The State of Maharashtra,
Through Bhoom Police Station

... Respondent

...
Mr. Shrikant G. Kawade, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 JANUARY 2024

PRONOUNCED ON : 09 JANUARY 2024

ORDER :-

1. By instant proceeding, applicant has prayed for suspension of sentence and grant of bail during pendency of the appeal.
2. It is pointed out that, applicant (i.e. original accused no.3) was convicted by the learned Additional Sessions Judge, Bhoom, District Osmanabad by order dated 19.11.2022 in Sessions Case No. 26

of 2021 tried for offence punishable under section 304 Part II of Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment for 7 years and to further pay fine.

3. In support of relief, learned counsel for applicant submitted that, false accusations are made about assaulting his own father. That, there is no direct evidence and case is based on circumstantial evidence. That, in fact deceased had suffered accident on fall and had suffered head injury. Applicant himself has reported the occurrence, but he is indicted on suspicion in a complaint by brother of deceased i.e. uncle of applicant. That, prosecution has come with a case about extra judicial confession. The above circumstances are made basis of registration of crime and even declared guilty.

It is further submitted that, applicant is behind the bars since more than one and half years. That, there is improper appreciation of evidence by trial Court in recording guilt and so appeal has been preferred. That, it would take long time to be heard and decided and hence, till then, it is prayed that sentence be suspended and applicant be set at liberty.

4. While opposing the above, learned APP submitted that, on trial he is found to be held guilty for committing culpable homicide not

amounting to murder. There is use of article like *Danda*, which is recovered at his instance. For all above reasons, he prays to dismiss the prayers.

5. Perused the record before the trial court. It seems that, deceased is father of applicant. Autopsy doctor has attributed death due to head injury. Admittedly, there is no direct evidence and case is based on circumstantial evidence. *Prima facie*, it seems from the judgment of the trial court that, evidence of complainant, who is brother of deceased and evidence of police patil, to whom there was alleged extra judicial confession has been relied. The sum and substance of prosecution case is that, as deceased father used to harass and beat mother, who is also an accused in the trial court, at her instance applicant, mother and other brother beat deceased.

6. Taking above material into consideration and as primarily guilt is fasten on the basis of circumstantial evidence and extra judicial confession and considering the fact that appeal has been filed, prayers raised herein deserves to be granted. Accordingly, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.

- (ii) The substantive sentence imposed on the applicant Pravin @ Pandurang S/o Dhanraj Thombre in Sessions Case No.26 of 2021 by the learned Additional Sessions Judge, Bhoom, District Osmanabad on 19.11.2022 stands suspended till the final hearing and disposal of Criminal Appeal No.1168 of 2023.
- (iii) The applicant be released on P.R. Bond of Rs.30,000/- (Rs.Thirty thousand only) with two solvent sureties in the like amount.
- (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 their subsequent appearances.
- (vi) 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.
- (vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)