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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2225 OF 2024
IN
CRIMINAL APPEAL NO.1094 OF 2023

Nagesh @ Jyotiba Shivaji Jadhav] .. Applicant

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Ritesh Thobde a/w Changdev Shingade and Zubi Ansari for the Applicant.

Dr.A.A. Takalkar, APP, for State.

Mr.Hrishikesh Shinde for Respondent No.2.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATE : 10th JULY, 2024.

P.C.

1] The present Interim Application is preferred by the Applicant Nagesh @ Jyotiba Shivaji Jadhav, who stand convicted by Judgment and order dated 12.09.2023 in Sessions Case No.271/2014 for committing an offence punishable under Section 302 and 323 read with 34 of the Indian Penal Code and is sentenced to undergo imprisonment for life alongwith accused No.2 Malan Shivaji Jadhav, his mother and Shivaji Ramchandra Jadhav, his father.

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Being aggrieved by the Judgment of conviction, the Applicant has preferred Criminal Appeal No.1094/2023, which is admitted on 11.10.2023.

He has preferred the present Interim Application for his release on bail, in the wake of pendency of the Appeal.

2] We have heard the learned counsel Mr.Ritesh Thobde for the Applicant, Mr.Hrishikesh Shinde, for Respondent NO.2 and Dr. A.A. Takalkar, the learned APP for the State.

Mr.Thobde would submit before us that all the accused persons were on bail during the pendency of the trial and it is only upon his conviction under the impugned Judgment, the Applicant has been taken into custody.

He has also placed reliance upon the order passed by this Court in Interim Application No.3983/2023, preferred by the other co-accused.

3] On 01.12.2023, the Application filed by the co-accused was heard and they were directed to be enlarged on bail by suspending their sentence, by recording the discrepancies in the Dying Declaration, made by the deceased, the first one being given to the Executive Magistrate (PW 7) and the second recorded by the police, as well as oral Dying Declaration to her father (PW 3). Recording that the

Applicants were on bail pending the trial and they had not abused or misused the conditions of bail, with no chance of Appeal being heard in near future, the Application was allowed.

4] With the able assistance of the respective counsel, we have perused the impugned Judgment and referred to the evidence of PW 3 – father of the deceased Dhanashri, who deposed about the ill-treatment meted out to his daughter, who was married to Nagesh Jadhav in the year 2013. He refer to telephonic call received from his son in law Nagesh, who disclosed to him that he is not ready to cohabit with Dhanashri, as she did not suit him. He, therefore, sent Police Patil to the village of his daughter's matrimonial home when the accused assured that he would treat her with dignity and respect.

On the very next day, he came to know that his daughter was set on fire and she was lying on the road and therefore, when he visited the spot, he found his daughter in burnt condition. According to PW 3, while she was admitted in Civil Hospital, she disclosed to him that Nagesh, her husband, poured kerosene on her person and her mother in law set her on fire, by lighting a matchstick and her father in law instigated them by saying that she should not be allowed to live.

5] The Nayab Tahasildar (PW 7) who recorded Dying Declaration of

Dhanashri, on the doctor having checked upon her and finding her to be conscious and well oriented state of mind, has deposed that Dhanashri said that her husband poured kerosene on her person and set her on fire and, therefore, she sustained injuries.

6] There is clear inconsistency in the version of the deceased and it is a well settled position of law that the conviction can be based on the Dying Declaration, and weightage is attached to, as it is given by the maker who is on the verge of death and is admissible under Section 32 of the Indian Evidence Act. But in case where there is inconsistency in the Dying Declaration, affecting the credibility of the maker, then the evidence of Dying Declaration, deserve appreciation with caution meticulously.

7] The learned trial Judge has, however, failed to consider this discrepancy and, therefore, we are of the opinion that the present Applicant also deserve similar treatment, as the other co accused are directed to be enlarged on bail, pending the Appeal.

Hence, the following order :

- a] Interim Application is allowed.
- b] The Applicant Nagesh @ Jyotiba Shivaji Jadhav shall be released on bail in connection with FIR No.181/2014, (SC No.271/2014) registered with Mohol Police Station, on

furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(d) The applicant shall report to the concerned Police Station on first Monday of every trimester between 10.00 a.m. to 12.00 noon.

(e) Upon release, the Applicant shall furnish his contact number and permanent residential address to the In-charge Police Station and shall keep him updated in case of any change.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]