

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 4352 OF 2023
IN
CRIMINAL APPEAL NO. 1093 OF 2023**

Kailas Bandu Aatkire

.. Applicant

v/s.

State Of Maharashtra

.. Respondent

Mr. Amin Solkar a/w. Ms.Lavanya Salve and Mr.Gaurav Shenoy for the Applicant/Appellant.

Mr. S.V. Gavand, APP for the Respondent-State.

CORAM : A. S. GADKARI &

SHYAM C. CHANDAK, JJ.

DATE : 26th FEBRUARY, 2024.

P.C. :

1) This is an application for suspension of sentence and releasing the Applicant on bail.

2) The Applicant is convicted under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life by the learned Additional Sessions Judge, Kalyan by its Judgment and Order dated 4th September 2023 in Sessions Case No.11 of 2021.

3) The prosecution case is based on circumstantial evidence. The circumstances against Applicant as propounded by the prosecution are:

I) The deceased i.e wife of Applicant was continuously watching mobile phone and was always *Online on Whatsapp*.

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- ii) Extra judicial confession given to PW No.18.
- iii) Finding of deadbody of Archana i.e. wife of Appellant in their matrimonial house in the midnight of 2nd October 2020.

4) As far as circumstance No.(i) is concerned, it is the motive propounded by prosecution for commission of the present crime. As far as circumstance No.(iii) is concerned, it was the matrimonial house of the deceased and therefore finding her deadbody inside the house cannot be considered as a significant circumstance.

5) As far as circumstance No.(ii) is concerned i.e. extra judicial confession given to PW No.18, perusal of record indicates that, the Applicant has given his written submission while recording the statement under Section 313 of Criminal Procedure Code before the trial Court. It is stated therein that, the PW No.18 had in fact confessed with Applicant that he committed murder of Applicant's wife and thereafter Applicant accompanied PW No.18 to Police Station and thereafter he has been implicated in this crime.

6) Prima facie we find substance in the contention of learned Advocate for the Applicant that, assuming for the sake of argument the prosecution case is taken as it is, at the most the act of the Applicant may fall within the purview of Exception 1 and/or 4 of Section 300 of I.P.C. and his conviction would be under Section 304(1) of the I.P.C., however the Applicant cannot be convicted for an offence under Section 302 of I.P.C.

7) The Applicant as of today has undergone about 3½ years of incarceration. There are no antecedents at the discredit of the Applicant. In view thereof, during the pendency of the Appeal we are inclined to suspend the substantive sentence imposed upon the Applicant and release him on bail.

7.1) Hence, the following order :

(i) The Applicant shall be released on bail in Sessions Case No.11/2021 arising out of C.R.No.I-221/2020 registered with Shivajinagar Police Station, Dist. Pune, on furnishing PR. bond in the sum of Rs.25,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from jail and during the pendency of the present Appeal, the Applicant shall attend Shivajinagar Police Station, Dist. Pune on every first Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year.

After end of one year, the Applicant shall attend Shivajinagar Police Station, Pune on every 1st Monday of every 3rd Month between 10:00 a.m. and 12:00 noon. The Applicant thus shall attend Shivajinagar Police Station, Pune four times in a year during the pendency of the present Appeal.

(iii) In case of two consecutive defaults in complying with the aforestated conditions, the Prosecution is at liberty to file an Application for cancellation of his bail.

(iv) Applicant shall inform his prospective residential address to the trial Court. The Applicant shall keep informed the trial Court of any change in his residential address and his mobile number, on which he can be contacted.

(v) Applicant shall make himself available at the time of final hearing of the Appeal.

8) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)