

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

**INTERIM APPLICATION NO.4455 OF 2023
IN
CRIMINAL APPEAL NO.1334 OF 2023**

Nilesh Sampat Lende ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Jitendralal Gorane a/w Vidya Gorane i/by Abhijit Devkhile, for
the Applicant/Appellant.

Mr. A. R. Patil, APP for the Respondent/State.

Mr. Dipak S. Shinde, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 27th FEBRUARY, 2024

PC.

1. Heard learned advocates for the parties.
2. This Application is for release of the accused/Applicant on bail and for suspension of sentence awarded by learned Additional Sessions Judge, Pune by judgment and order dated 21.10.2023 in Sessions Case No.546 of 2016.
3. In short case of the prosecution is that the deceased/victim committed suicide due to harassment and ill-treatment at the hands of her husband i.e. present Applicant and his mother. After the incident, a suicide note Exh.47 was recovered from the spot. It is stated in the suicide note that the husband and mother-in-law are responsible to the death of the victim. On the date of incident, her

husband had beaten her. The note further shows that she tendered apology to her children. It is written that she was suffering for three years.

4. Learned advocate for the Applicant has taken this Court briefly through the evidence of the prosecution and the suicide note. He submits that the story of the prosecution is doubtful as the FIR is lodged at 11:00 a.m. on 14.01.2016, whereas the Panchnama of the spot is prepared at 07:00 a.m. i.e. four hours before recording of the FIR, which contains the number of First Information Report. He further submits that hand writing expert who has given opinion about the hand writing of the deceased has not stated in his evidence as to what method he has adopted for coming to a conclusion about the hand writing. In the evidence of brother of the victim, it has come on record that there were no serious complaints made by the deceased. From the evidence of the mother, it is pointed out that the deceased was short tempered. She did not like anything going against her will and she immediately used to get upset. Learned advocate further argued that to prove offence under Section 306 of IPC, specific *mens-rea* needs to be shown. In this case, taking the suicide note as it is, it does not show that the husband had any intention that the deceased should commit suicide. He thus submits that a case is made out to grant bail.

5. Learned APP vehemently argued the matter and opposed the bail application. He submits that the evidence of PW-1 i.e.

brother and PW-4 i.e. mother of the deceased is corroborative. The suicide note shows that there was consistent harassment at the hands of the husband. The deceased committed suicide immediately within three years of marriage attracting the presumption under Section 113A of the Evidence Act. He thus prays for rejection of the Application.

6. Learned advocate for Respondent No.2 also vehemently opposes the bail application stating that the prosecution has duly proved the offence. At this stage, this Court need not go into the appreciation of evidence. There is already hand writing expert's opinion to prove that the suicide note is in the hand writing of the deceased. He also prays for rejection of the bail application.

7. This Court is aware that at this stage, Court has only to see *prima-facie* case of the accused and as to whether the judgment is perverse or is not based on sufficient evidence. This Court is conscious of this fact. However, looking at the submission and the cross-examination of the PW-1 and PW-4, it is seen that there were no serious complaints made by the deceased. PW-1 has specifically stated that deceased had made complaints only on one or two occasions. PW-4 has also stated that she used to make similar kind of complaints of trivial nature. She has also stated that the deceased was short tempered and used to get upset on small things. It is not seen that the present Applicant had any *mens-rea* or had any intention that the deceased should commit suicide. The sentence

awarded is seven years for the offence under Section 306 of IPC and three years for the offence under Section 498A of IPC. There is no possibility of Appeal coming up for final hearing in near future. It also needs to be considered that the Applicant has paid fine amount. He was on bail during trial and there is no complaint of misuse of liberty granted to him. For this reason, this Court is inclined to grant bail by suspending sentence. The sentence is therefore suspended as imposed by learned Additional Sessions Judge, Pune by judgment and order dated 21.10.2023 in Sessions Case No.546 of 2016. Hence the following order :-

- i) The Application is allowed.
- ii) The sentence awarded by learned Additional Sessions Judge, Pune by judgment and order dated 21.10.2023 in Sessions Case No.546 of 2016 stands suspended.
- iii) Applicant shall be released on bail on furnishing PR bond and solvent surety in the sum of Rs.15,000/-.
- iv) Applicant shall furnish contact details including his mobile number etc. to the concerned Police Station.
- v) Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.

8. The Application stands disposed of.

[KISHORE C. SANT, J.]