

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

***INTERIM APPLICATION NO. 937 OF 2024
IN
CRIMINAL APPEAL NO. 276 OF 2024***

Laxman Raghunath Naik ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Abhishek Kulkarni a/w Mr. Sagar Wakale for the Applicant

Mrs. Kranti T. Hiwrale, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
TUESDAY, 1st OCTOBER 2024**

P.C :

1 Heard learned counsel for the parties.

2 By this interim application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3 The applicant vide judgment and order dated 3rd October 2018 passed by the learned Sessions Judge, Alibag in Sessions Case No.140/2017 has been convicted and sentenced for the offence punishable under Section 302 of the Indian Penal Code (`IPC`) to suffer rigorous imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for three months.

4 Perused the evidence. The prosecution case essentially rests on an oral dying declaration made to PW2-Shakun Naik (mother of deceased) and PW4-Rajesh Goregaonkar (Police Head Constable attached to Civil Hospital, Alibag). It is the prosecution case that the applicant and the deceased who were husband and wife used to repeatedly have quarrels, pursuant to which, the deceased had come to her maternal house. It is the prosecution case that on the day of the incident, the applicant poured kerosene on the person of his wife and set her (deceased) ablaze.

5 If the evidence of PW1-Shridhar Naik (father of the deceased) and PW2-Shakun Naik (mother of the deceased) is perused, neither of the two speak about the presence of the other, when the alleged dying declaration was made.

 The cross-examination reveals that PW2-Shakun Naik to whom the alleged oral dying declaration was made, fell unconscious at the time of the incident. It has also come in the evidence of PW2 that when the statement of the deceased was being recorded, she was sitting near the deceased. It also appears from the cross-examination that the doctor came after the statement of the deceased was recorded. The evidence of PW3-Badal Naik (son of the deceased), who was about 4 to 5 years of age, has in his cross-examination, to a Court question, stated that his mother had poured kerosene on her person. The applicant is in custody for about 7 years.

6 Considering the aforesaid evidence and the fact that the appeal is not likely to be heard in the immediate near future, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;

- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his appeal is finally disposed of;

- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

7 The applications are accordingly disposed of.

8 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.