



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPA] No.282 of 2024

in

Criminal Appeal No.147 of 2024

Milind Sadashiv Hinge

vs.

State of Maharashtra, through P.S.O., Police Station Sonegaon, Nagpur

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. K.G. Rathi, Advocate (appointed) for the Applicant.

Msr. S.V. Kolhe, A.P.P. for the Non-Applicant/State.

CORAM: SMT. M.S. JAWALKAR AND M.W. CHANDWANI, JJ.

DATE : 22nd NOVEMBER, 2024.

By the present application, the applicant-appellant seeks suspension of sentence pending the appeal.

02. The applicant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, thereby sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- for committing murder of his mother.

03. The learned Counsel for the applicant submitted that there was no motive of the applicant behind the commission of the offence. The aunt of applicant, i.e. sister of deceased, and her daughter, though claimed to be the eye-witnesses, their presence at the time of actual incident is doubtful. No other independent witnesses, who gathered on the spot at the time of incident, have been examined by the prosecution. According to him, there was no intention of the applicant to commit murder of his mother. He further went on submitting that at the most, it can be stated that offence under Section 304 (Part II) of the Indian Penal Code has been committed by the applicant.

04. *Per contra*, the learned A.P.P. objected the application on the ground that there are eye-witnesses to the incident and she supported the impugned judgment.

05. Perusal of the impugned judgment and record and proceedings including the evidence of Pratibha (PW-1), sister of deceased and her daughter Sonam (PW-3), it reveals to us that the alleged incident occurred on 02/02/2019 at about 05:00 p.m. in the house of the applicant itself, wherein, as per the prosecution, the applicant assaulted her mother with fist blows and kicks and also by roof-tile, whereby she sustained injury. She was taken to the hospital, where she was declared dead. Pratibha (PW-1), the real sister of the deceased, who resides behind the house of the deceased, lodged the F.I.R. According to her version, she heard noise of quarreling and therefore, she rushed to the house of the applicant. It is also transpired to us from her version that it took five minutes to reach to the house of the applicant. At that time, the people also gathered there. This witness claimed that when she along with her daughter reached the spot, the accused was assaulting the deceased. The trial Court relied on the version of these two eye-witnesses.

06. The contention of the learned Counsel for the applicant is that this witness along with her daughter reached the spot after the alleged incident. Because after hearing the noise, she reached the spot of incident after some time, when the people from the locality had already gathered on the spot. In all probabilities, the people had gathered there immediately after the incident, whereas she reached on the spot with PW-3 thereafter. This creates doubt about the presence of witnesses i.e. PW-1 and PW-3, on the spot of incident at the relevant time. A witness, who gathered on the spot, did not say about the assault. He also pointed out that the prosecution has not brought

anything on record with regard to the motive of the crime. That apart, it is the case of the prosecution that the assault was made by fist blows and roof-tile. Therefore, the motive and preparation are missing.

07. Considering the submissions of the learned Counsel for the applicant, we find that an arguable case is made out on merits and a case is also made out for suspension of sentence pending the appeal. In the result, the following order is passed :

ORDER

- i. The application is allowed.
- ii. Pending the appeal, the substantive sentence of the applicant passed in Sessions Trial No.367/2019 vide impugned judgment dated 30/11/2021 shall remain suspended till final disposal of the appeal.
- iii. Till then, the applicant shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the like amount before the trial Court.
- iv. The application is disposed of accordingly.

(M.W. Chandwani, J.)

(Smt. M.S. Jawalkar, J.)

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