



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

CRIMINAL APPLICATION (APPA) NO.144/2024

IN

CRIMINAL APPEAL NO.72/2024

(Shubham Gajanan Gawai Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.C. Jaltare, Counsel for the applicant.
Mr. Amit Chutke, A.P.P. for the non-applicant / State.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 19.3.2024.

Heard.

2. This is an application seeking suspension of execution of sentence in Sessions Case No.41/2021 vide judgment and order dated 20.9.2023 by which the applicant was convicted for the offence punishable under Section 302 of Indian Penal Code and directed to suffer imprisonment for life.

3. Learned Counsel for the applicant primly argued that the trial Court seriously erred in convicting the applicant without any sort of evidence. Particularly it is submitted that none of the eye witnesses has supported the prosecution case. The trial Court has recorded conviction by taking that the defence is not probable as well as blood was found on the clothes of accused.

4. With the assistance of both sides we have gone through the impugned judgment as well as the relevant evidence. Undisputedly prosecution does not get support from the evidence of eye witnesses. *Prima facie* it is evident that it is the case of a homicidal death however

unless there is legally admissible evidence to connect the applicant with the crime a person cannot be convicted. Besides the evidence of seizure of blood stained clothes of accused there appears to be no other material. Applicant's learned Counsel has explained that the deceased was father of applicant accused and thus while lifting the possibility of coming into contact of blood of deceased cannot be ruled out.

5. The learned A.P.P. is unable to point out any other material nor in position to find from the impugned judgment any material so as to make out the case against the applicant. Certainly, it is a case which requires reconsideration. Considering the nature of evidence and reasons recorded by the trial Court, we deem it fit to exercise our jurisdiction to suspend the execution of sentence. In case of success position would be irreversible and this is one more reason for us to suspend the execution of sentence.

6. In view of the above, the application is allowed.

7. The execution of substantive sentence passed in Sessions Case No.41/2021 vide judgment and order dated 20/9/2023 stands suspended till final disposal of appeal.

8. In the meanwhile, applicant shall furnish P.R. bond of Rs.25,000/- and surety in the like amount before the trial Court.

(MRS.VRUSHALI V.JOSHI, J.)

(VINAY JOSHI, J.)