



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

CRIMINAL APPLICATION (APPA) NO.226/2024

IN

CRIMINAL APPEAL NO.120/2024

Pankaj s/o Chandrakant Kadu

Vs.

State of Maharashtra, thr. P.S.O., P.S. M.I.D.C., Nagpur

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

Court's or Judge's orders

Shri A.V. Bobde, Advocate h/f Ms Shubhangi Jadhao, Advocate for appellant
Shri Ujwal Phasate, APP for respondent/State

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

DATE : 12/12/2024

1. Heard.
2. By the judgment of conviction dated 10.11.2023, passed by the learned Additional Sessions Judge, Nagpur in Sessions Case No.340/2021, the applicant along with co-accused have been convicted for the offence punishable under Section 302 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.8500/- each. Pending the appeal, the present application for suspension of sentence came to be filed.
3. Mr. A.V. Bobde, learned Counsel appearing on behalf of applicant vehemently submitted that there is no

iota of evidence against the applicant to connect with the crime. There is no evidence brought by the prosecution with regard to the ingress and outgress of the applicant, during the relevant time, in the house of deceased. The conviction has been recorded only on the circumstance of illicit relationship of the applicant with the co-accused i.e. wife of the deceased Shekhar and on the recovery, at the instance of applicant and other co-accused from the house of co-accused. According to him, these circumstances are not sufficient to convict the applicant in the case for an offence, which contemplate imprisonment for life. He submits that applicant has put case on merit and in case of acquittal, the position with regard to his incarceration will be irreversible, hence prays for suspension of sentence.

4. *Per contra*, the learned APP for the State objected the application on the ground that there is evidence on record to show that there are illicit relationships between the applicant and co-accused. The deceased who was the husband of co-accused, being impediment in their relationship, they eliminated the deceased. There is material on record to show that the applicant frequently used to visit to the house of deceased and recovery of iron rod and clothes of the applicant having blood stains is sufficient for rejection of application.

5. Having heard the learned Counsel for the respective parties and having gone through the impugned judgment

and depositions. Perusal of these would reveal that wife of the deceased informed PW-10 about death of the deceased in the house. He was lying on Sofa in weird condition. Meanwhile his brother was informed who lodged report with concerned Police Station and offence came to be registered under Section 302 of the Indian Penal Code against the applicant.

6. The deceased was found in dead condition in his house i.e. in the house of co-accused. The material against the applicant is that there were illicit relationship between the applicant and co-accused, as well as recovery of the iron rod, that too which has been recovered from the house of the co-accused. The deceased was drunkard. Perusal of evidence of Doctor that the injury on the person of deceased is also possible by fall on ground by push in case the person is in drunken condition.

7. In view of above, an arguable case is made out. In case, the applicant succeeds in appeal, the position would be irreversible. Considering the material on record, we find the case is made out for suspension of sentence pending the appeal. Hence this order:

ORDER

- i) The application is allowed.
- ii) Pending the appeal, the substantive sentence passed

against the present applicant in Sessions Case No.340/2021 recorded by the learned Additional Sessions Judge, Nagpur shall remain suspended.

iii) In the meanwhile, the applicant shall be released on bail before the Sessions Court, on furnishing PR Bond of Rs.30,000/- with one solvent surety in the like amount.

Accordingly, the application is disposed of.

(M.W. CHANDWANI, J.)

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare