



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

Criminal Application (APPA) No. 327 of 2024

in

Criminal Appeal No. 166 of 2024

Akash S/o Dadarao Chavan

Versus

**State of Maharashtra through P.S.O. Police Station Darwaha, Tah. Darwaha,
District Yavatmal**

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

Court's or Judge's Order

Shri C.D.Rohankar, Advocate for the applicant.

Ms. Kalyani Marpakwar, APP for the non-applicant/
State.

**CORAM : SMT. VIBHA KANKANWADI &
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 27th JUNE, 2024.

The present application is filed under Section 389 of the Code of Criminal Procedure for suspending the sentence.

2. The applicant is the accused no.1 who faced the Session Trial No. 7 of 2020 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code by the learned Additional Sessions Judge, Darwaha, District Yavatmal on 22nd December, 2023.

3. Heard Shri Rohankar, learned advocate for the applicant and Ms. Kalyani Marpakwar, learned Additional Public Prosecutor for the non-applicant.

4. It has been vehemently submitted on behalf of the applicant that co-accused, accused no.2 has also been convicted by the learned Additional Sessions Judge, Darwha in the same judgment and she has filed bail application by suspending her sentence and by order dated 24th January, 2024 in Criminal Application No. 33 of 2024, her sentence has been suspended by this Court.

5. He submits that the deceased was the wife of the present applicant. They were happily married and blessed with two children. Only because that the husband was seen with the deceased, it appears that the learned trial Judge has invoked the provisions of Section 106 of the Indian Evidence Act which is contrary to settled principle of law. The basic facts were in fact not proved before invoking the provisions of Section 106 of the Indian Evidence Act. The evidence of witnesses would show that they have categorically not stated about the presence of the applicant inside the house prior to the incident, though scantily wanted to say that there was a domestic quarrel between the applicant and the deceased. In fact Investigating Officer has admitted that he has not seen the surface wounds on the dead body and the injuries were noted by the Medical Officer cannot be said to be vital. There was no question of committing murder of the deceased by the applicant. As regards the marital relationship even the informant who is the father of the deceased had accepted the said fact. He, therefore, prays that the applicant be released by suspending the sentence. He wants to take care of children henceforth.

6. Per contra, learned APP strongly opposed the application stating that there was sufficient evidence that too it has been held beyond reasonable doubt by the learned trial Judge and therefore the present applicant came to be convicted. The applicant was never on bail through out the trial. The evidence of the neighbouring witnesses would disclose that the applicant was in the house since prior to the incident or the deceased was found to be dead. Now, under the said circumstance, it was the bounden duty of the accused to explain the circumstances in which his wife was found dead in the house. When such explanation is not coming forward, invoking of the provisions of Section 106 of the Indian Evidence Act is justifiable. The evidence of Medical Officer would show that there were 21 injuries around mouth and neck and there was internal injury in the nature of hammerage. These injuries were anti mortem and therefore there was clear intention of commission of the murder by the applicant.

7. At the outset the point which is not in favour of the applicant is that he was never on bail through out the trial.

8. It can be seen that the prosecution has examined in all thirteen witnesses to bring home the guilt of the accused. Though the case was based on circumstantial evidence, when the evidence has been led, this Court can consider the said evidence for a limited extent while considering the application under Section 389 of the Code of Criminal Procedure. The release of co-accused on bail suspending the sentence cannot be a ground per se to allow the

application by the applicant. The role played by co-accused will made difference.

9. The evidence of the neighbouring witnesses P.W.No.6 Sunita and P.W.No.11 Chetan would disclose stated the presence of the applicant in the house at night time. P.W.No.10 is the Medical Officer who conducted the autopsy and he says that in all 21 injuries were ante mortem. The cause of death that has been given is “death due to asphyxia”. He has been subjected to cross-examination and in the cross-examination he has stated in response to the question that when body of Nikita was brought for post mortem there was no serious injury found on her dead body. The answer was “Single Injury is not grievous but collectively grievous.” Taking into consideration evidence of these witnesses, whether the learned trial Judge was justified in invoking Section 106 of the Indian Evidence Act would be considered at the time of final hearing. However, the basic facts will have to be considered at this stage. Further it appears that the applicant no.1 has not given any explanation regarding the circumstances in which his wife was found murdered. It appears that plea of alibi has not been taken.

10. We reiterate that release of accused no.2 cannot be considered as the ground of parity for releasing the applicant no.1 taking into consideration the relationship, that applicant no.2 was lady and the defence that has been taken in respect of identity of the applicant no.2.

11. In view of the above facts when there is evidence against the applicant no.1 and he was not on bail through out the trial, we do not find this is a fit case where his sentence needs to be suspended. Accordingly, the application stands rejected.

[MRS. VRUSHALI V. JOSHI, J.]

[SMT. VIBHA KANKANWADI, J.]