



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

CRIMINAL APPLICATION (APPA) NO. 743 OF 2024

IN

CRIMINAL APPEAL NO. 420 OF 2024

(Swapnil Dnyaneshwar Wetalkar Vs. State of Maharashtra, thr PSO, PS Pulgaon, Dist Wardha)

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

Court's or Judge's orders

Mr. T.U. Thathod, Advocate for applicant.
Ms. Mayuri Deshmukh, APP for respondent /State.

**CORAM : VINAY JOSHI &
ABHAY J. MANTRI, JJ.**

DATED : 21-10-2024

Heard.

2. This is an application filed by accused No. 1 Swapnil seeking suspension of execution of sentence passed in Sessions Case No. 127/2012, by learned Sessions Judge, Wardha, whereby he has been convicted for offence punishable under Section 302 of the Indian Penal Code.

3. The applicant has been charged for committing murder of his wife Mrs. Ekta in furtherance of common intention with co-accused Ms. Rekha by setting her ablaze. Admittedly, there are no eye-witness to the incidence but the conviction is based on two dying declarations recorded on the very day i.e. 7.5.2012. On the day of occurrence, in the morning, the incident happened in their residential house in which Ekta sustained severe burns on which she was shifted to hospital.

The first declaration (Exhibit 204) was recorded at 10.20 a.m. by PW No. 10 PSI Ramesh Pohane followed by second declaration (Exhibit No. 178) recorded at 2.15 p.m. by PW No. 7 – the Executive Magistrate. Though the oral dying declaration was to

the mother of deceased, however, the trial Court did not rely on the same. The evidence against the applicant Swapnil is about two dying declarations.

4. We have gone through both the dying declarations which are consistent on material point. The tenor of the dying declarations is at the instance of dispute between husband and wife. Applicant Swapnil was quarreling and beating his wife Ekta. At that time, co-accused Rekha arrived, poured kerosene at the person of Ekta and set her ablaze which proved to be fatal.

5. The applicant's learned Counsel would submit that there is no material to infer that it was a pre-planned act of both the accused. It is submitted that there was usual quarrel between the husband and the wife. However, Rekha acted in a cruel manner abruptly by pouring kerosene and setting Rekha ablaze.

Prima facie, we could see that the submission can be one possible view from the material on record. Thus, the applicant has made out an arguable case. In the circumstances, we are inclined to exercise our discretion in favour of the applicant.

In view of above, the application is allowed.

6. Execution of substantive sentence passed against the applicant Swapnil passed in Sessions Case No. 127/2012, by Sessions Judge, Wardha, stands suspended till the disposal of the appeal.

7. In the meantime, the applicant shall furnish P.R. bond of Rs. 50,000/- with one solvent surety in the like amount.

(ABHAY J. MANTRI, J.)

(VINAY JOSHI, J.)