



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

CRIMINAL APPLICATION (APPA) NO.734/2024

IN

CRIMINAL APPEAL NO.115/2024

Sarita w/o Shekhar Kanojiya

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 C.R, Thakur, 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, the appellant along with co-accused have been convicted for the offences punishable under Section 302 of the Indian Penal Code in Sessions Case No.340/2021 passed by the learned Additional Sessions Judge, Nagpur and are sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.8500/-. Pending the appeal, the present application for suspension of sentence came to be filed.

3. Shri. Thakur, learned Counsel appearing on behalf

of appellant submits that as per the case of prosecution, accused No.1 who assaulted the deceased while deceased was quarreling with the applicant and also abusing and beating her. He submitted that no blood stain was found on the clothes of the applicant, even the iron rod recovered at the instance of applicant and other co-accused from the house of applicant does not bear the blood stain. The circumstances are not sufficient to convict the applicant, hence seeks suspension of sentence pending the appeal.

4. *Per contra*, the learned APP for the State objected the application on the ground that the applicant is wife of deceased Shekhar. She was residing with him in the house. Therefore, burden lies on her to explain the circumstances in which the deceased died and she kept mum and took defence of total denial. Therefore, the learned trial Court has rightly convicted the applicant for non explaining the circumstances, coupled with the other incriminating circumstances, such as the illicit relationship of applicant with the other co-accused, which is the motive in this case. Therefore seeks dismissal of the application.

5. Having heard the learned Counsel for the respective parties and having gone through the impugned judgment and depositions of the witnesses, it is transpired the learned trial Court has convicted the applicant mainly on the

ground that she being wife of the deceased was residing in the house where the dead body of the deceased Shekhar was found and since she failed to explain the circumstances in which the deceased died and also held that the applicant was having illicit relation with co-accused and, therefore, applicant was having motive. The learned Trial Court relied on iron rod recovered from house of the applicant. On these three circumstance, the trial Court convicted the applicant and other co-accused. Perusal the final report wherein the prosecution alleges that the co-accused who assaulted the deceased by means of iron rod when the deceased in spite of giving understanding was continuous beating and abusing not only the applicant. No doubt, the applicant is wife of the deceased and residing in the same house with the deceased where the dead body of the deceased was found rather she informed the other witnesses regarding the death of deceased. The deceased was a drunkard. The evidence of Doctor PW-15, wherein he has admitted that the death can be possible, when a drunken person is pushed and he falls on the floor. The iron rod recovered at the instance of the present applicant also does not carry any blood stains. We find substance in the argument of the learned Counsel for the appellant that an arguable case is made out on the merit. There are chances, the applicant may succeed in appeal. The appeal may not be heard in near future. The applicant is incarcerated since year 2021. In case the applicant succeeds in appeal the position may be

irreversible. Therefore, 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 by the learned Sessions Judge in Sessions Case No.340/2021 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.)