



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

CRIMINAL APPLICATION (APPA) NO. 890 OF 2024
IN
CRIMINAL APPEAL NO. 285 OF 2024

SINDHU @ PUSHPENDRAKUMAR S/O. KAMTAPRASAD SHAHU

...Vs...

THE STATE OF MAHARASHTRA THR. P.S.O., P.S. HUDKESHWAR, TAH. & DIST. NAGPUR

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Shri A.M.Chandekar, Advocate with Shri S.N. Singh, Advocate for appellant.
Shri S.S.Doifode, APP for respondent/State.
Shri R.M. Daga, Advocate for Asst to Prosecution.

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

RESERVED ON : 27th NOVEMBER, 2024.

PRONOUNCED ON : 11th DECEMBER, 2024.

The present application is filed by the appellant/applicant for suspension of sentence and grant of bail.

2. The appeal is filed by the appellant being aggrieved by the judgment, conviction and sentence dated 14/07/2023 passed by the learned Special Judge Designated under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Additional Sessions Judge, Nagpur in Atrocities Special Case No. 33 of 2018 and 74 of 2018, thereby convicted the present appellant for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code and sentenced him to suffer imprisonment for three years and pay fine of Rs. 1,000/-.

3. It is the case of the prosecution that, on 17/02/2018, Sou. Ushabai Kamble along with her grand-daughter Rashi, aged about 1½ years left their house at about 06.00 p.m. for going to the jewellery shop to prepare silver anklet for Rashi. Thereafter, late night, said Ushabai did not return home and when she was called on her mobile phone, it was switched off. Therefore, a missing report was lodged by her husband Sevakdas at about 04.00 a.m. on 18/02/2018 that, Sou. Ushabai Kamble along with her grand-daughter Rashi had left her house in the evening of 17/02/2018 and had not returned home.

4. On 18/02/2018, one Pravin, r/o. Vihirgaon, Nagpur informed the police about two bodies which were found in gunny bag in Vihirgaon Naka. The bodies of Ushabai and Rashi were identified by the son of Ushabai. Both dead bodies had cut injuries on their necks. As such, vide Crime No. 130/18, the offences under Section 302 and 201 of the I.P.C. were registered against the unknown persons. During the investigation, the witnesses informed that the deceased were lastly seen in the shop of accused no. 1 and it is also the prosecution case that, the accused no. 1 has killed Ushabai and Rashi by cutting their necks with the help of an iron tin piece. After investigation, the charge-sheet came to be filed before the learned Trial Court and the trial was conducted. The learned

Trial Court convicted the present appellant for the offence punishable under Section 201 read with Section 34 of I.P.C.

5. It is submitted by the learned counsel for the applicant/appellant that the appellant was on bail during the pendency of the trial and had never misused the liberty granted in his favour.

6. On the contrary, the learned APP supported the judgment passed by the learned Trial Court and relied on ***State of Haryana V/s. Hasmat***, reported in ***AIR 2004 SC 3936***, wherein in para 8, it is held as under:-

“8. The learned Sessions Judge, Gurgaon by a judgment dated 24.10.2001 had found the accused respondent guilty. Criminal Appeal No.100DB/2002 was filed by the respondent. The fact that during the pendency of the appeal the accused respondent was on parole goes to show that initially the accused respondent was not given the benefit of suspension of execution of sentence. The mere fact that during the period of parole the accused has not misused the liberties does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court was whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

7. We have heard the learned counsel for the applicant and learned APP for the respondent/State. Admittedly, the name of the applicant was not mentioned in the F.I.R. and there is no identification parade conducted by the prosecution. As such, *prima facie*, it appears that, the applicant having a good case on merit and there is every likelihood that, he may succeed at the time of final hearing of the appeal. There is less possibility of hearing the matter finally in near future. As the present appellant is convicted for the offence punishable under Section 201 r/w. Section 34 of I.P.C. and sentenced him to suffer imprisonment for three years, he is entitled for suspension of substantive sentence during the pendency of the appeal and grant of bail. As such, we proceed to pass the following order:-

ORDER

- 1) The application is allowed.
- 2) The substantive sentence in respect of accused/applicant Siddhu @ Pushpendrakumar S/o. Kamtaprasad Shahu in Session Trial/Atro. Special Case No. 74/2018 is hereby suspended during the pendency of present appeal.
- 3) The Special Judge Designated under the S.C. & S.T. (Prevention of Atrocities) Act & Additional Sessions Judge, Nagpur shall release the applicant on

furnishing P.R. bond in the amount of Rs. 30,000/-
and one solvent surety in the like amount.

(M.W. CHANDWANI, J.)

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

B.T.Khapekar