

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

CRIMINAL APPLICATION (APPA) NO.1128 OF 2024 IN
CRIMINAL APPEAL NO.664 OF 2024

Saiyyad s/o Mohasin Saiyyad Asif and another
Vs.

State of Maharashtra, through PSO, PS, Civil Lines, Akola

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

Court's or Judge's orders.

Shri Syed Salman Ali, Advocate for appellants/applicant.
Shri Ujjwal Phasad, APP for respondent/State.

CORAM : SMT. M.S. JAWALKAR &
M.W. CHANDWANI, JJ.
DATE : 10.12.2024.

By this application, the applicant is seeking suspension of sentence and grant of bail. By the impugned judgment and order dated 22.10.2024 passed by the learned Additional Sessions, Judge Akola in Sessions Case No.166/2015 convicted the applicant and co-accused (appellant no.1) for the offence punishable under Section 302 read with Section 109 of the Indian Penal Code and sentenced them to suffer life imprisonment and to pay fine of Rs.5,000/- and Rs.3,000/- respectively.

2. Learned counsel appearing on behalf of applicant submits that the applicant and co-accused have been convicted by the learned Additional Sessions Judge on the basis of dying declaration. According to him, there are three dying declarations and there is no consistency in those dying

declarations. In the first dying declaration, she recorded that she immolated herself, whereas in other two dying declarations, which are of latter point of time, the deceased blamed not only to the co-accused (husband) but also to the present applicant (mother-in-law). According to him, even those two subsequent dying declarations are not consistent. The applicant was on bail during the trial, therefore, pending appeal seeks suspension of substantive sentence.

3. Conversely, the learned APP appearing on behalf of State has submitted that the learned trial Court has very well dealt with all three dying declarations and has recorded finding of conviction holding the applicant also the guilty for instigating the offence. According to him, earlier dying declaration was recorded when accused were present whereas subsequent two dying declaration were recorded after relatives of the deceased reached to the hospital. According to him, the judgment is very well reasoned and there is no chance to the appellant to succeed in the appeal, hence, sought rejection of the application.

4. Having heard the respective counsel for the parties and having gone through the impugned judgment and depositions on record, it transpires that the deceased has been admitted in the hospital on account of burn injuries on 07.05.2015 and she succumbed to the burn injuries after 15 days. Perusal of the record goes to show that initially prosecution has come-up with two dying declarations. At the

instance of co-accused including the applicant, the earlier dying declaration was brought on record wherein the deceased stated that she set fire on herself. Perusal of impugned judgment goes to show that the learned Judge has dealt with the first dying declaration and discarded it on the ground that a lady would not tell against her husband or in-laws in their presence and dying declaration was recorded without opinion of medical officer regarding fitness of the deceased and recorded the finding that first dying declaration was involuntary statement and recorded that two subsequent dying declarations which have been recorded after duly certified by the Doctor regarding fitness of the deceased.

5. With the able assistance of both counsel we have perused the subsequent dying declarations in one dying declaration deceased has specifically stated that in one incident her mother-in-law had asked applicant to burn the deceased which occurred prior to the burn incidence. In another dying declaration which has been again recorded by the investigating officer, the deceased assigned no role to the applicant except her presence at the time of incident. We find that an arguable case is made out for final hearing. Considering these aspects coupled with fact that the appeal may not be heard in near future and in case applicant succeeds in appeal, the position will be irreversible. Hence, we find that a case is made out for suspension of sentence.

Hence, this order:

ORDER

- i. The application is allowed.
- ii. Pending appeal, execution of substantive sentence recorded by the learned Additional Sessions Judge, Akola in Sessions Case No.166/2015 in respect of the applicant- Raisabee Saiyyad Asif shall remain suspended.
- iii. The applicant – Raisabee Saiyyad Asif shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- iv. The applicant shall remain present at the time of final hearing.

The application stands disposed of.

(M.W. CHANDWANI, J.)

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

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