



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

**CRIMINAL APPLICATION (APPA) NO. 479 OF 2024
IN
CRIMINAL APPEAL (APEAL) NO. 722 OF 2023**

Jaggu Sanak Dhurve (C/11416)

-Vs.-

The State of Mah., thr. PSO, PS Parshioni, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr.T.A.Mirza, Adv. for the appellant (appointed).
Mrs.Kalyani Marpakwar, APP for the respondent-State.

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

DATE : 10TH JUNE, 2024

The present application has been filed under section 389 of the Code of Criminal Procedure for suspension of sentence and for release of the applicant/appellant on bail.

2. The present appellant was original accused, who stood prosecuted for the offences punishable under section 302 and 201 of the Indian Penal Code in Sessions Trial No.356 of 2020 for committing murder of his wife. He has been sentenced to suffer rigorous imprisonment for life and pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under section 302 of the Indian Penal Code. He has been further convicted and directed to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/-,

in default to suffer simple imprisonment for one month for the offence punishable under section 201 of the Indian Penal Code.

2. Heard learned Advocate Mr.T.A.Mirza for the applicant/appellant and learned APP Mrs.Kalyani Marpakwar for the respondent.

3. The learned Advocate appearing for the appellant has taken us through the evidence that was led before the Trial Court and submits that the Trial Court erred in considering the testimony of PW-1, who was the Police Patil in whose presence the alleged extra judicial confession has been given by the present appellant. The Trial Court also erred in not appreciating the evidence of PW-3 Lahanu Jaganji Dadhe, the land owner in whose land the appellant and his wife used to reside and work. As regards the alleged extra judicial confession to PW-1 Police Patil is concerned, in the cross of PW-3 Lahanu Dadhe, it has been stated that the said confession was given in presence of Police and therefore, the said extra judicial confession is hit by section 25 of the Indian Evidence Act. He further submits that the learned Trial Judge has invoked section 106 of the Indian Evidence Act. In view of the fact that the dead body was found in the house where the appellant and deceased used to reside. However, the learned Trial Judge has not considered that the prosecution has not adduced evidence, who had seen appellant and deceased together when the deceased was alive; shown prior to the death. Though the cause of death

says that the death was due to smothering, yet, there was no conclusive evidence to point out that the offence has been committed by the appellant. It will take long time to hear and dispose of the appeal and for that purpose, the appellant need not be kept behind bar. He, therefore, canvassed for suspension of sentence and released of the appellant on bail.

4. *Per contra*, the learned APP strongly opposed the application and supported the reasons given by the learned Trial Judge. She submits that the cause of death was smothering. The dead body was found in the house of the accused and within reasonable time, the appellant had given extra judicial confession to PW-1 Police Patil.

5. At the stage of the application under section 389 of the Code of Criminal Procedure, we are required to consider the evidence in a limited way. Now the evidence that was led against the appellant was that his wife was found dead in the house, which was occupied by him and the deceased. The postmortem report Exhibit-30 gives probable cause of death as smothering and coupled with the same, the Column-17 discloses that there were about 17 severe surface wounds. To this, the explanation or the circumstance that has been told by PW-1 that when the extra judicial confession was given, it was stated that the appellant told him that the wife was murdered at a distance from the house in the field and thereafter, he had dragged the dead body up to his house/hut. The extra judicial confession is to the Police Patil and the decision of the Full Bench of this Court

in the case of **Rajeshwar Hiranman Mohurle (In Jail) v. State of Maharashtra**, reported in **2009 (4) Mh.L.J. 483**, says that Police Patil is not a Police and therefore, the extra judicial confession cannot be strictly said to be hit under section 25 of the Indian Evidence Act. Of course, it is required to be appreciated at the time of final hearing as to whether Police persons were present when the alleged extra judicial confession was given by the appellant to PW-1 Sheshrao. It will not be our case to mention here that there is no direct suggestion to him in the cross, but it appears that that situation has been tried to be brought through PW-3 Lahanu Dadhe.

6. The prosecution case is then supported by the spot panchanama, the circumstances and the relationship between the husband and wife, which have been tried to be brought on record through PW-3 Lahanu Dadhe.

7. Another circumstance is that the appellant was not on bail throughout the trial. Under the said circumstance, we do not find this to be a fit case where the sentence needs to be suspended.

8. The application stands rejected.

(MRS.VRUSHALI V. JOSHI, J) (SMT.VIBHA KANKANWADI, J)