



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

CRIMINAL APPLICATION NO.524 OF 2024

IN

CRIMINAL APPEAL NO.291 OF 2024

(Nitesh s/o Somaji Neware Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Chandekar, Advocate for the appellant.
Ms S. Kolhe, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 9, 2024.

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant along with the other co-accused was prosecuted of the offence punishable under Section 304, 304-B, 498-A of Indian Penal Code and section 3 & 4 of Dowry Prohibition Act, 1961.

3. As per the facts of the case deceased Roshani was elder daughter of the informant Chandanal Jaychand Chaudhary. Her marriage was performed with accused Nitesh on 24/04/2017 as per the rituals. After marriage, she resumed the cohabitation at the house of the present appellant. As per the allegation initially she was treated well and thereafter she was subjected for the ill-treatment and harassment for the demand of Rs.2,00,000/- and subsequently, her death was caused on 25/05/2018. As

per the prosecution case, death is caused due to the poisoning. On the basis of the said report, police have registered the crime. After completion of the investigation, the Investigating Officer has filed charge-sheet. The prosecution has adduced the evidence to prove the charge and after appreciation of the evidence, learned Sessions Court held the accused guilty of the offence punishable under Section 304 of the IPC and sentenced to suffer R.I. for 7 years and to pay fine of Rs.3000/- in default of payment of fine R.I. for four months. The appellant further sentenced to suffer R.I. for three years and pay fine of Rs.2000/- for the offence punishable u/s. 498-A of IPC and in default of fine further R.I. of two months. No separate sentence was awarded for the offence under section 3 & 4 of Dowry Prohibition Act.

4. Being aggrieved and dissatisfied with the same present appeal is preferred by the appellant on the ground that learned trial Court has not appreciated the evidence to the extent that there are general allegations against the present appellant and the other co-accused as far as the demand of money is concerned. No evidence is adduced by the prosecution to show that death of the deceased is caused due to the poisoning. The CA reports are negative. The cross-examination of the witnesses shows that deceased was leading her matrimonial life happily, and therefore, the appellant has every chance of success in the present appeal.

5. Learned Counsel for the appellant reiterated the said contention and submitted that the entire evidence is on record nowhere shows that any dowry was fixed prior to the marriage and it was remained to be paid, therefore the allegation regarding dowry are not established by the prosecution. He also invited my attention towards the evidence of PW-1 and PW-2 who are the parents and submitted that their evidence is also not sufficient to show that deceased was subjected for the harassment. On the contrary, the cross-examination of the witnesses shows that the deceased was leading happy married life. Thus, he submitted that the appellant has every chance of success in the present appeal but the appeal would take its own time for its final disposal, and therefore, the application for suspension of sentence deserves to be allowed.

6. Learned APP strongly opposed the application and submitted that the death of the victim is caused in a matrimonial house within 7 years of marriage. There was a demand of dowry and for the demand of dowry she was harassed and death is caused. On the basis of the evidence adduced by the prosecution, the learned trial Court has convicted the appellant and at this stage, no case is made out for grant of suspension of sentence. In view of that, the application deserves to be rejected.

7. I have heard learned Counsel for both the parties. On going through the entire evidence adduced by

the prosecution and on perusal of the material before the Court it appears that admittedly, the CA report is negative and there is no evidence on record to show that she died due to the poisoning. The other evidence on record wherein the admissions are extracted from the witnesses to the extent that the deceased was leading happy married life at her matrimonial house. At this stage, re-appreciation of the evidence is not to be done but what is to be seen is that whether the appellant has made out a case to show that he has many chance of success in the present appeal.

8. Considering the submission made by the learned Counsel for the appellant and on the basis of evidence, at this stage, the appellant has made out a case to show that the appeal would take its own time and he has fair chances of acquittal. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 04/03/2024 passed by the Sessions Judge, Gondia in Sessions Case No.66/2018 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Nitesh s/o Somaji Neware be released on bail on executing P.R.

Bond in the sum of Rs.25,000/- (Rs. Twenty Five thousand) with one surety, in the like amount.

(iv) The appellant shall attend the Sessions Court, Gondia on 5th day of every month till disposal of the appeal.

9. The application stands disposed of.

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The appeal is already admitted and R. & P. is already received.

2. Place the appeal before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)