



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

CRIMINAL APPLICATION (APPA) NO. 865 OF 2024

IN

CRIMINAL APPEAL NO. 502 OF 2024

Rajesh S/o. Bhaskar Thakre

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

Shri R. R. Vyas a/b Shri V. S. Sambre, Advocate for applicant.
Shri Mehroj Pathan, APP for non-applicant/State.

**CORAM :- SMT. M. S. JAWALKAR &
M. W. CHANDWANI, JJ.**

ORDER CLOSED ON : 21.11.2024

ORDER PRONOUNCED ON : 27.11.2024

Heard.

2. By the present application, the applicant seeks suspension of sentence under Section 430 of the Bhartiya Nagrik Suraksha Sanhita, 2023.

3. The learned District Judge, Akola convicted the applicant in Sessions Case No. 14/2023 for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-; rigorous imprisonment for 7 years and fine of Rs.10,000/- under Section 315 of the IPC; rigorous imprisonment for 3 years and fine of Rs.10,000/- under Section 201 of the IPC for committing

murder of his wife- Varsha and also fetus carried by his wife at the time of her death and causing disappearance of the evidence of commission of the offence.

4. The prosecution case is that on 16.09.2022, the car of the applicant was intercepted by API Waghmare, wherein on the rear seat of the car, the dead body of his wife was found, who died by ligature strangulation. Since, the applicant could not give proper explanation about death of his wife therefore, an offence came to be registered against the applicant. During the investigation, it was revealed that the applicant has committed murder of his wife. Prior to that he also had given her pills to abort a child conceived by her. The charge-sheet came to be filed against the applicant. The learned Judge found him guilty of the above offences and awarded the aforesaid sentences.

5. The learned Judge mainly relied on Section 106 of the Indian Evidence Act (IEA) as well as the opinion of the Doctor (PW8) regarding homicidal death of the deceased and found that the defense of the applicant that his wife has committed suicide is false and is an additional link. The learned Judge found that the applicant has taken the dead-body for secret cremation in order to destroy the evidence and not for post-mortem.

6. The contention of the learned counsel for the applicant is that the applicant was residing with his wife at Patur. Since his wife has committed suicide, he took the dead-body of his wife to village Chondi and thereafter proceeded to the District Hospital, Akola for post-mortem.

According to him, had the applicant committed murder then he would not have taken the dead-body of his wife in his car that to on the rear seat instead of in dickey. According to him, there is no evidence of the applicant last seen alongwith the deceased therefore, Section 106 of the IEA is wrongly applied by the learned Judge. He further submitted that the chain of link has not been established by the prosecution and the applicant has very chance to succeed in the appeal. The hearing of the appeal may take considerable time hence, till then the sentence awarded to the applicant be suspended and the applicant be released on bail.

7. Conversely, the learned APP for the State objected to the application on the ground that the applicant is nobody but, the husband of the deceased, who were residing in a house at Patur. According to him, evidence of the Doctor establishes the fact of homicidal death of the deceased. It was for the applicant to explain the circumstances as to how his wife died. Rather, the applicant has come up with a false defense , which is unbelievable and the Trial Court has rightly discarded his defense. The learned APP sought rejection of the application.

8. Having heard the learned counsel for the respective parties and gone through the impugned judgment, record and proceedings. It transpires to us that the deceased died at the house, where the deceased and the applicant were residing. No doubt, the daughter of the applicant turned hostile and did not support the prosecution's case but, the fact remains that there is opinion

of the Doctor, which suggests death of the deceased is caused by ligature strangulation. We cannot ignore the fact that the applicant is a Doctor, who is well aware of the fact that if there is un-natural death then the first thing to be done is to inform the Police and get the post-mortem done on the dead-body. Instead of that, the applicant initially took the dead-body of his wife to village Chondi.

9. Thus, *prima facie*, we do not find any patent infirmity in pressing into service of Section 106 of IEA by the learned Judge. In view of the fact that death of the deceased was caused at the house of the applicant and the death is homicidal one therefore, no case is made out for suspension of sentence pending the appeal. The exercise of re-appreciation of evidence of the witnesses will be done at the time of final hearing of the appeal.

10. In view of the above, the application is rejected.

(M. W. CHANDWANI, J.)

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