



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

905 CRIMINAL APPLICATION NO.3098 OF 2024
IN
CRIMINAL APPEAL NO.691 OF 2024

Tushar Ananda Koli

....Applicant

Versus

The State of Maharashtra

.....Respondent

.....

Shri. Jitendra Vijay Patil, Advocate for the Applicant

Smt. Uma S. Bhosale, APP for the Respondent / State

.....

**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Dated : FEBRUARY 18, 2025

PER COURT :-

. This is an Application for suspension of substantive sentence imposed by learned Additional Sessions Judge, Amalner, District Jalgaon, *vide* Judgment and Order dated 1/4/2024, passed in Sessions Case No.96/2022, convicting and sentencing the Applicant for the offences punishable under Sections 302, 323, 504, 201 and 120-B read with Section 34 of the Indian Penal Code and Sections 3 and 7 read with Section 25 of the Arms Act.

2. The case of the Prosecution, as seen from the papers on record, is that, Deceased – Varsha and Rakesh were in love. Since they belonged to different castes, their respective family members were opposing their relationship. Out of the said love affair, the incident took place on 12th August, 2022. Deceased Rakesh had gone to the house of Deceased

Varsha. The family members of Varsha took both of them, i.e. Rakesh and Varsha, to one place (Varad Phata) and killed them. The offence was registered against 13 (thirteen) persons. After the Trial, seven accused persons came to be convicted.

3. It is submitted by learned Advocate for the Applicant / Appellant that the case is based on circumstantial evidence. The evidence against the Applicant is, statement of Juvenile in conflict with law that, the Applicant opened the fire on Deceased, the Applicant had a telephonic conversation with the Co-accused, Statement of Co-Accused that he burnt clothes of all the Accused including that of the Applicant and seizure of mobile phone of the Applicant along with CDR's. He submits that the Co-accused and Accused – Bharat Sanjay Raising to whom similar role has been attributed, have been granted bail by this Court by suspending their sentences. He further submits that on the ground of parity the Applicant is entitled for bail. He submits that the Applicant is behind the bars for more than 2 ½ (two and half) years and the Application be allowed.

4. The Application is opposed by learned APP. She submits that FIR was registered at the instance of the Juvenile in conflict with law. The role attributed to the Applicant is that he opened the fire on Deceased. She submits that the Application be rejected.

5. We have perused the papers on record. Admittedly, the case is based on circumstantial evidence. There is no dispute that the

Co-Accused have been released on bail by suspending their sentences in Criminal Application Nos.2553 of 2024, 3043 of 2024 and 3102 of 2024. The Statement of Co-Accused will not be admissible in law. The other circumstances are similar which are relied by the Prosecution against the Co-accused, who are granted bail. There is no possibility that the Appeal would be heard in the near future. The Applicant is behind the bars for more than 2 ½ (two and half) years. The ground of parity is available to the Applicant. Hence, we proceed to pass the following order :-

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending the Appeal, the execution of substantive sentence of imprisonment imposed upon the Applicant *vide* Judgment and Order dated 01st April, 2024, passed by learned Additional Sessions Judge, Amalner, in Sessions Case No.96 of 2022, convicting and sentencing the Applicant for the offences punishable under Sections 302, 323, 504, 201, 120-B read with Section 34 of the Indian Penal Code and Sections 3 and 7 read with Section 25 of the Arms Act, to stand suspended.
- (iii) The Applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP