



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

**CRIMINAL APPLICATION NO.3102 OF 2024 IN
CRIMINAL APPEAL NO.692 OF 2024**

Bharat Sanjay Raising

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. J.V. Patil, Advocate for applicant
Mrs. U.S. Bhosle, A.P.P. for respondent
.....

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

DATE : 15th JANUARY, 2025

ORDER :

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 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 only evidence against the applicant is that, the blood stains on his full pant, which was seized on the next day of the crime, matched with the blood of deceased Rakesh. He submits that, the said circumstance i.e. discovery of stick at the instance of the applicant/ appellant and empty cartridge cannot

be said to be incriminating as no blood stains were found on the stick, and the ballistic report did not speak that the empty cartridges were fired from the fire arms seized during the course of investigation. He submits that, the confession in the form of memorandum will not be admissible piece of evidence. He submits that, two accused have been granted bail by this Court by suspending the sentences, in Criminal Application No.2553/2024 and Criminal Application No.3043/2024. He submitted that, the applicant is behind the bars for more than two and half years. He submitted that the application be allowed.

4. The application is opposed by learned A.P.P. She submitted that, the F.I.R. has been registered at the instance of juvenile co-accused who disclosed about the incident and also the involvement of the applicant/ appellant in the crime. She submits that, the blood group found on the pant of the applicant matches with the DNA of the deceased Rakesh. She submits that, the applicant was involved in the conspiracy and by virtue of Section 34 of the Indian Penal Code, he has been rightly convicted by the learned Trial Court. She submits that,

the role attributed to the co-convicts, whose sentences have been suspended by this Court, is different to the role attributed to the applicant and therefore, there is no question of parity. She therefore urged for rejection of the application.

5. We have perused the record. Admittedly, the case is based on circumstantial evidence. The circumstances against the applicant are as follows :

- a) The stick was recovered at the instance of the applicant from the house of juvenile Kunal. Admittedly, there are no blood stains on the said stick so as to link with the incident. There is nothing to show that there were wheel marks on the dead body of the deceased.
- b) The other circumstance is DNA report to show that the blood stains found on the full pant of the applicant and soil collected from the spot of incident matched with the blood of deceased Rakesh.
- c) The third circumstance is that, two empty cartridges were seized at the instance of the applicant/ appellant, which, as per ballistic report, were found not to be fired from the fire arm seized during investigation.

- d) The last circumstance is the applicant's own memorandum statement. That would not be admissible piece of evidence.

6. From the above, it is clear that the only evidence against the applicant is that the blood on his pant matched with the blood of deceased Rakesh. There is no evidence to show that the applicant was clad in the said clothes at the time of the incident. There is statement of co-accused Ravindra, on which the prosecution has relied that, he burnt the clothes of all the accused persons. It is debatable whether only on this piece of evidence i.e. Blood of Deceased on the pant of applicant, the conviction can be maintained. The applicant is behind the bars for a period of more than two and half years. There is no possibility that the appeal will be heard finally in the near future. 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.)

fmp/-