



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

920 CRIMINAL APPLICATION NO.3636 OF 2025
IN APEAL/584/2025

1] Wasimkhan Rasulkha Pathan
2] Imrankha Rasulkha Pathan ..Applicants

Versus

The State of Maharashtra ..Respondent

.....
Mr. Nilesh S. Ghanekar - Advocate for Applicants

Mr. S. K. Shirse - APP for the State
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CORAM : NEERAJ P DHOTE, J.

Dated : OCTOBER 01, 2025

PER COURT :-

1. Heard Mr. Nilesh S. Ghanekar, learned Advocate for the Applicants, and Mr. S. K. Shirse, learned APP for the State. Perused the papers on record.

2. This is an Application for suspension of substantive sentence imposed upon the Applicants by the learned Sessions Judge, Aurangabad, vide the Judgment and Order dated 18.07.2025 passed in Sessions Case No. 147 of 2016, convicting and sentencing the Applicants as follows :

“1. Accused nos.1 to 6 are hereby acquitted of the offence punishable under Section 302 r/w. 34 of the Indian Penal Code vide Section 235 (1) of the Code of Criminal Procedure.

2. *Accused nos.5 and 6 are hereby acquitted of the offences punishable under Sections 304-B and 498-A r/w. 34 of the Indian Penal Code vide Section 235 (1) of the Code of Criminal Procedure.*
3. *Accused no.1 to 4 are hereby convicted for the offence punishable under Section 304-B r/w. 34 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 10 years.*
4. *Accused no.1 to 4 are hereby convicted for the offence punishable under Section 498-A r/w. 34 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal Procedure and sentenced to suffer simple imprisonment for 2 years and to pay fine of Rs.5,000/- each, in default to suffer simple imprisonment for 3 months.*
- 5 to 12.”

3. The Applicants are the Husband and the Brother-in-law of the Deceased. The Deceased died within a period of sixteen [16] months of her marriage due to burn injuries at her matrimonial house. It is the case of the Prosecution that, the victim was harassed by the Convicts for dowry and was burnt. Initially, the charge-sheet was filed for the offences punishable under Sections 302, 304-B, 498-A, 323, 506 r/w. 34 of the Indian Penal Code. To establish the case, the Prosecution examined in all sixteen [16] witnesses. Considering the evidence on record, the learned Trial Court convicted the Applicants as above.

4. It is submitted by the learned Advocate for the Applicants that, the learned Trial Court has disbelieved the case of oral dying declaration. The learned Trial Court passed the conviction on the basis of the evidence of witnesses which was hearsay in nature. The evidence of the sister of the Deceased, which is heavily relied upon by the learned

Trial Court, is not corroborated by the witnesses, as she was not residing with the Applicants. The Applicants were on bail during the Trial and they are behind the bars for a period of 5 ½ months. The Appeal will take its own time and therefore, the Application be allowed.

5. The Application is opposed by the learned APP. He submits that the evidence of the Sister and Uncle of the Deceased are sufficient to maintain the Conviction. The factum of unnatural death of the Victim in her matrimonial house is sufficient to draw inference against the Accused. He submits that the learned Trial Court has rightly appreciated the evidence on record and therefore, the Application be rejected.

6. As seen from the papers on record, the learned Trial Court has not believed the evidence of the Oral Dying Declaration. The father and brother-in-law of the Victim did not support the case of the prosecution. Though the evidence of PW7 sister of Deceased, and PW5 the Uncle of Deceased, shows that the villagers and the Chairman of the Tantamukti Samittee i.e. PW6, tried to settle the dispute, the evidence of PW6 shows that, though he was the Chairman of the Tantamukti Samittee, he admits in his cross-examination that, he did not know the in-laws of the Deceased, nor had he conversed with them and he was not in a position to identify the in-laws of the Deceased. The evidence of PW7 that, the Deceased informed telephonically that her in-laws were troubling her for

money is an improvement. The evidence of PW5 regarding ill-treatment is not specific. The evidence of PW7 – sister of Deceased *prima facie* does not get corroboration from the evidence of PW5 – the Uncle of the Deceased and PW6 – Chairman of the Tantamukti Samittee. The Applicants were on Bail during the Trial. The punishment is in the nature of term sentence. The Appeal will take some time to come up for final hearing. In this view of the matter, I am inclined to allow the Application. Hence, the following order.

ORDER

- [i] Application is allowed.
- [ii] The substantive sentence imposed upon the Applicants by the learned Sessions Judge, Aurangabad, in Sessions Case No. 147 of 2016 by Judgment and Order dated 18.07.2025, is hereby suspended till the final disposal of Criminal Appeal.
- [iii] The Applicants be released on P.R. of Rs.15,000/- [Rupees Fifteen Thousand] each, with one surety in the like amount each.
- [iv] Bail before the Trial Court.
- [v] Application stands disposed off.

(NEERAJ P. DHOTE, J.)

GGP