



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4151 OF 2024
IN
CRIMINAL APPEAL NO. 908 OF 2024

Gokul Jairam Kshirsagar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. N.S. Ghanekar, Advocate h/f Mr. R.R. Karpe, Advocate for applicant
Ms. U.S. Bhosle, A.P.P for respondent – State
....

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

DATE : 13th JANUARY, 2025

PER COURT :

1. This is an application for suspension of substantive sentence imposed by learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar in Sessions Case No. 143 of 2023 by judgment and order dated 25th September, 2024 convicting the applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. The case of the prosecution, in brief is that on 06th August, 2023 the applicant took his two minor children, comprising a daughter aged eight years and a son aged four years, for hair cut. Since the applicant and children did not return home, applicant's wife (informant) made enquiry about them. She learnt from one Nitin Anarase that her husband i.e. the applicant was

lying in an inebriated state. The said witness brought the applicant to his home. When the wife enquired with the applicant whereabouts of their children, the applicant said that he will show. However, nothing was disclosed by the applicant. Thereafter the informant saw crowd near a well located at some distance from her house. She came to know that her two children drowned in the said well. In the early hours of next day i.e. 07th August, 2023, she lodged the report that her two children were killed by the applicant. On investigation, the applicant was charge-sheeted and after trial, he came to be convicted by the above referred judgment and order.

3. It is submitted by learned counsel for the applicant that there is no evidence to connect the applicant with death of his children. He submits that the report is lodged by the applicant's wife and there is no material on record to show that, relationship between the applicant and his wife were strained. There is delay in lodging the report. He submits that the applicant was habitual to liquor consumption and he was found in drunken state at the relevant time. He submits that the evidence available on record do not establish conclusively that he was responsible for death of his children. The applicant is behind the bars for about one and half years. The appeal will not come up for hearing in near future, and therefore, the application be allowed.

4. The application is opposed by learned A.P.P. She submits that the evidence of the informant, who is the wife of the applicant, clearly shows that

the applicant left the house with the children for hair cut, and therefore, it was for the applicant to explain as to where he parted with the children. She submits that, the well wherein the children were found, was 200 feet away from the house of the applicant. She submits that learned trial Court has rightly convicted and sentenced the applicant.

5. Both the sides took us to the evidence of relevant witnesses. The report is lodged by the applicant's wife. It is clear from the evidence on record that relationship between the applicant and the informant were strained. Though the evidence of the informant shows that the applicant left the house with their children in the afternoon and they did not return, there is no immediate disclosure that the applicant was responsible for their death. Admittedly, the applicant was found in an inebriated state in a ditch in his field. The well, where both the children of the applicant were found, was near the house of the applicant. Admittedly, some part of the parapet wall of the well was damaged. The cause of death as seen from the postmortem report is due 'asphyxia due to drowning'. There is nothing to show that hairs of the deceased were cut. No food particles were found in the stomach of both the deceased. The evidence on record gives rise to two possibilities i.e. either homicidal or accidental death. The appeal will not come for hearing in near future.

6. In view of above, we proceed to pass the following order :-

The execution of substantive sentence of imprisonment imposed against the applicant vide judgment and order dated 25th September, 2024 passed by learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar in Sessions Case No. 143 of 2023 to stand suspended, pending the appeal. The applicant be released 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.)

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