



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

903 CRIMINAL APPLICATION NO. 4577 OF 2024
IN APEAL/1119/2023

Abdul Raheman Gulam Ahemad

VERSUS

The State Of Maharashtra

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Shri. Nilesh S. Ghanekar - Advocate for Applicant

Shri. S. J. Salgare - APP for Respondent/State

...

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

DATED : 29th JANUARY, 2025

PER COURT : -

1. This is the Application for suspension of substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Basmathnagar, vide Judgment and Order dated 18th September, 2023 passed in Sessions Case No.05 of 2019, thereby convicting the Applicant for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.

2. Heard learned advocate for the Applicant and the learned Assistant Public Prosecutor for the respondent/State.

3. It is the case of the Prosecution, in brief, that the Applicant, along with co-convict, committed Murder of his wife in the residential house. The minor daughter of the Deceased witnessed the incident and informed about the same to her maternal grandfather. The maternal

grandfather reported the incident to the Police and Crime came to be registered for the offence punishable under Sections 498A, 302 r/w 34 of the IPC with Basmathnagar Police Station. After completion of the investigation, Charge-sheet was filed and after trial, the Applicant and co-convict [Accused Nos. 1 and 2] came to be convicted for the offence punishable under Section 302 read with 34 of the IPC, and Accused Nos. 4 and 5 were acquitted of the said offence and case abated against Accused No. 3.

4. It is submitted by the learned Advocate for the Applicant that the medical evidence nowhere established the Homicidal death of the Applicant's wife. The cause of death is shown as *'ligature compression around neck'*. There were no marks of violence on the dead body. Though the Prosecution claims that the Applicant's daughter witnessed the incident, her statement was recorded after a period of six (6) days from the incident, though she was available. The FIR was lodged by the father of the deceased on hearsay information. As there is no clear evidence of Homicidal death and considering the legal position that, the evidence of a child witness is to be considered with great care and caution, there are fair chances of acquittal. The Applicant is behind the bars for more than six (6) years and the Application be allowed.

5. The Application is opposed by the learned APP. He submits that the Prosecution's case rests on the direct evidence. Though

Applicant's daughter was minor at the relevant time, she witnessed the incident and she immediately informed the Informant, who was her maternal grand-father and, therefore, it becomes relevant under Section 6 of the Indian Evidence Act. The FIR shows the name of minor daughter being an eye-witness to the incident. There is evidence of neighbouring witness, who deposed that the quarrel took place between the Applicant and Deceased. The spot panchanama prepared during the course of investigation falsifies the case of suicidal death. There is *prima facie* case against the Applicant and there are no fair chances of acquittal. He cited Judgment in the case of **Omprakash Sahni versus Jai Shankar Chaudhary & Anr. Etc.**, 2023 LiveLaw (SC) 389, delivered by the Hon'ble Supreme Court of India, wherein it has been observed that, while considering the application under Section 389 of the Cr.PC., the question to be examined as to whether the convict has fair chances of acquittal.

6. We have gone through the evidence on record with the assistance of both the sides.

7. The evidence of child witness shows that, the child was four (4) years old at the time of the incident. It is needless to state that a child is vulnerable to tutoring; therefore, the evidence of a child witness is required to be considered with great care and caution. Though the Informant, who was the father of the Deceased, named the child as an eye-witness to the incident and she was very much available, her

statement was recorded after a period of six (6) days from the incident. The evidence of a child witness goes to show that after the incident, she was in the custody of her maternal grandfather, i.e., the Informant. Her evidence was recorded after a period of three years. Her cross-examination indicates that she was viable to the questions put to her. If we see the medical evidence, the cause of death is shown as '*ligature compression around neck*'. The medical evidence shows that the tongue-tip was clenched between the anterior teeth. The ligature mark was not complete around the neck. The evidence of Medical Officer, who performed the *post mortem*, shows that most of the findings are suggestive of hanging. She did not find any strangulation mark/injury on the dead body. Even if the evidence of neighbouring witness in respect of the quarrel between the Applicant and the Deceased is accepted, the possibility of Deceased hanging herself cannot be ruled out, particularly in the light of the evidence of Medical Officer. With this evidence available on record, *prima facie*, Applicant has good case on merits. The Applicant is behind the bars for more than six (6) years. The Appeal would not come up for final hearing in the near future and hence, we proceed to pass the following order : -

ORDER

- [i] The Criminal Application is allowed.
- [ii] The substantive sentence imposed upon the Applicant by the learned Additional Sessions Judge, Basmathnagar, vide

Judgment and Order dated 18th September, 2023 passed in Sessions Case No. 05 of 2019, convicting the Applicant for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, is suspended during the pendency of the present Appeal.

[iii] The Applicant be released on bail on his furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.

[iv] Bail before the Trial Court.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE