

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1888 OF 2024
IN
CRIMINAL APPEAL NO. 466 OF 2024**

Pandurang Kamu LokhandeApplicant
Versus
The State of MaharashtraRespondent

Mr. Satyavrat Joshi a/w Reena Prajapati a/w Shivani Kondekar
i/by Samay Pawar - Advocate for the Applicant
Mr. S. R. Agarkar - APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 21st JANUARY 2025

P.C. :

1. This is an application for bail, pending appeal. The Applicant was convicted by the Sessions Judge, Sangli vide his judgment and order dated 22.03.2024 passed in Sessions Case No. 197 of 2019.

2. He was convicted for commission of offences punishable under Sections 302 and 342 read with 34 of the Indian Penal Code. He was sentenced to suffer imprisonment for life and to pay fine of Rs. 2,000/- and in default, to suffer rigorous

imprisonment for six months for the offence under Section 302 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/- and in default, to suffer rigorous imprisonment for 15 days for the offence under Section 342 of the Indian Penal Code.

3. The Applicant is in custody since 31.12.2018. The prosecution case is that, the incident occurred on 30.12.2018. The deceased was the sister-in-law of the present Applicant i.e. wife of the Applicant's brother. There are allegations in the prosecution story that the Applicant was having illicit relationship with her. The Applicant's brother scolded his wife-the deceased and thereafter, she stopped having any relationship with the Applicant. He did not like it and committed her murder. The F.I.R. was lodged by the Applicant's brother. He was not an eye-witness, but he was told by his mother (mother of the Applicant as both of them are the brothers) that the Applicant had assaulted the informant's wife-Sunita. There were 25 incised wounds on the dead body. The investigation was carried out. The charge-sheet was filed. The Applicant faced the trial. There were

alleged eye- witnesses to the incident, but they had not supported the prosecution case. The other circumstance against the Applicant was recovery of the blood stained clothes and blood stained knife.

4. According to the prosecution case, those articles were sent for DNA testing alongwith sample of the blood collected on the cotton swab. It was allegedly the blood of the deceased on those articles. The DNA report shows that the blood found on the swab and the clothes of the Applicant and the knife was that of the deceased. That was another circumstance against the Applicant. The third circumstance which ultimately weighed with learned judge was that the dead body was found in the house of the Applicant and, therefore, according to the learned Judge, the burden was on the Applicant to explain as to how the dead body was found in the house.

5. Learned counsel for the Applicant submitted that all the eye-witnesses have turned hostile. Therefore, that evidence cannot be held as an incriminating piece of evidence against the Applicant. The clothes and blood stained knife were recovered

from a dilapidated house behind the Applicant's house. He submitted that the learned Judge himself has observed that the DNA profile of the blood stains in that connection was a weak piece of evidence, and it was not held against the Applicant. The only piece of evidence which was held against the Applicant on which the conviction was based was about finding of the dead body inside the house.

6. Learned APP submitted that DNA profile is an incriminating piece of the evidence and finding of the dead body inside the house of the Applicant cannot be ignored. We have considered these submissions.

7. The learned Judge in paragraph nos. 33 and 34 of the impugned judgment has observed that the eye-witnesses PW No. 13-Dasharath and PW No. 14-Chandrakant as well as PW No. 6-Lakavva were declared hostile. PW No. 6 was in fact the mother of the informant and the Applicant. The informant himself who was husband of the deceased was also declared hostile.

8. Thus, there is no direct evidence which can be held against the Applicant in this case. The other evidence was the blood found on the knife and the Applicant's clothes. Through DNA profiling it was matched with the deceased's blood.

9. Learned Judge in paragraph no. 48 of his judgment has discussed this issue and has raised a serious doubt about collection of the sample of the deceased's blood. Therefore, even that circumstance is not relied on by learned Judge to base his conclusion.

10. The only incriminating piece of evidence which learned Judge has held against the Applicant is about finding of the dead body in the house of the Applicant. According to the learned Judge, it was the duty of the Applicant to explain this fact under Section 106 of the Evidence Act. As rightly pointed out by learned counsel for the Applicant, the cross-examination of the first informant-PW No. 5-Bayaji mentions that the Applicant and PW No. 5 were staying in the same house. Only the kitchens were different. But both the kitchens were in the same house. Therefore, Bayaji's wife, who is the deceased in this case, was also

residing in the same house. In that view of the matter, it cannot be said that finding of her body in her house was an incriminating circumstance against the Applicant, which only he could have explained.

11. In this view of the matter, there are serious doubts raised by the defence against the prosecution case which requires serious consideration. Based on the above discussion, the Applicant has made out a case for grant of bail during pendency of the appeal. Hence, following order:-

ORDER

(i) During pendency and final disposal of the present appeal, the Applicant - Pandurang Kamu Lokhande is directed to be released on bail on executing Personal bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

(ii) Interim application is disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)