



**THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APPA) NO.1057 OF 2024

IN

CRIMINAL APPEAL NO.611/2024

Amol s/o Pandurang Borkar and anr

..VS..

State of Mah., thr.PSO PS Lakadganj, Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
**Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri
U.P.Dable, Advocate for the Applicant.
Shri R.V.Sharma, Additional Public Prosecutor for the NA /State.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/01/2025

PRONOUNCED ON : 10/01/2025

1. This is an application for suspension of sentence
and for grant of bail.

2. By judgment dated 18.10.2024 passed by
learned Additional Sessions Judge, Nagpur in Sessions Case
No.49/2015, appellants are convicted for offence
punishable under Section 304-B read with 34 of the Indian
Penal Code and sentenced to suffer rigorous imprisonment
for ten years and to pay fine Rs.5000/-, in default, to suffer
simple imprisonment for six months.

3. The appellants were prosecuted for offence under Section 304-B of the Indian Penal Code on the basis of a report lodged by Shankarrao Jagobaji Tiple on 10.9.2014 alleging that marriage of his daughter Sonali (the deceased) took place with appellant No.1 on 17.6.2014. Appellant No.2 is mother-in-law of the deceased. After the marriage, she was ill-treated for demand of Rs.2.00 lacs for purchasing a vehicle and this fact was disclosed to him by the deceased. On 9.9.2014, he received a phone call of appellant No.1 disclosing that as the deceased is not well, she is admitted to Chandak Hospital. He immediately along with his wife and son reached the said hospital. However, on the next day i.e. 10.9.2014 the doctor declared the deceased as dead. On seeing the dead body, he witnessed blue marks on the person of the deceased and there was odor of poison coming from her mouth. It was alleged that the death of the deceased was caused in her matrimonial house in a suspicious condition and she was ill-treated and harassed for demand of Rs.2.00 lacs.

4. On the basis of the said report, the police

registered the crime and carried out investigation. After completion of the investigation, chargesheet was submitted in the court of learned Magistrate. Learned Magistrate has committed the case to the Court of Sessions for disposal. In support of the prosecution case, the prosecution has examined in all 18 witnesses. On appreciation of evidence, both appellants are convicted as the aforesaid. Being aggrieved with the same, the present appeal is preferred along with the application for suspension of sentence and for grant of bail.

5. Heard learned Senior Counsel Shri S.P.Dharmadhikari for appellants and learned Additional Public Prosecutor Shri R.V.Sharma for the State.

6. Learned Senior Counsel for the appellants submitted that the entire evidence adduced by the prosecution is not sufficient to warrant the conviction of appellants. He has taken me through the entire evidence and submitted that from the evidence, there is no single incident quoted by witnesses to show that the deceased was subjected to ill-treatment for demand of dowry. On the contrary, the evidence of the prosecution witnesses

shows that it was appellant No.1 husband who helped her to secure a job and also provided her a mobile and a vehicle to attend the job. The evidence on record sufficiently shows that she was leading happy married life. As far as injuries on the person of the deceased are concerned, the same were not noted during the inquest panchanama or by PW11 Dr. Rajendra Chandak when she was admitted in his hospital. Thus, the entire evidence on the basis of which the judgment impugned is passed is erroneous. The appellants have chances to make out a case for acquittal. However, the appeal would take its own time for the final disposal and in the meanwhile, if the sentence is executed, the appeal would become infructuous. In view of the above facts and circumstances and in the light of the insufficient evidence, the execution of the sentence be suspended and the appellants be released on bail.

7. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the deceased was residing along with the appellants. Her death is caused in her matrimonial house whereat both

appellants are residing. The death of the deceased is due to poisoning as well as while conducting postmortem, head injury was noted by the Medical Officer for which no explanation is put forth. However, the death of the deceased caused is within a special knowledge of appellants with whom she was residing. However, no explanation is put forth by appellants. Considering a fact that the death of the deceased is caused within three months of the marriage in her matrimonial house, the same requires to be taken into consideration. In view of that, the application deserves to be rejected.

8. Heard learned counsel appearing for parties. Perused the judgment impugned in the appeal as well as the evidence adduced before the trial court.

9. It is alleged that the marriage of the deceased was performed with appellant No..1 on 17.6.2014 and her death was caused on 9.9.2014. The evidence of parents shows that the deceased was subjected for ill-treatment for demand of Rs.2.00 lacs. However, no specific instances are narrated by them. Admittedly, the prosecution has not adduced the evidence of any neighbour. The evidence of

PW6 shows that on enquiring with the deceased about her matrimonial life, she was hiding something. The evidence of the Medical Officer Harshwardhan Khartade, who conducted the postmortem, shows that on external examination, he noticed following injuries on the person of the deceased:

(i) contusion present over right parietal region of head of size 3 x 2 cms bluish in colour;

(ii) contusion present over left side of upper part of chest situated 2 cm below shoulder tip of size 3.5 cm x 2 cm bluish in colour;

(iii) contusion present over left side of chest situated 2 cm below and medial 2 injury No.2 of size 6 cm x 4 cm bluish in colour;

(iv) contusion present over anterior aspect of middle one third of left arm of size 7 cm x 5 cm bluish in colour, and

(v) contusion present over left side of upper back situated 3 cm below tip of left shoulder of size 1 cm x 1 cm bluish in colour. All contusions confirmed on cut section.

The evidence further shows that all injuries were ante-mortem. His evidence further shows that on internal examination, he found (i) under scalp hematoma present over mid parietal region of size 3 cm x 2 cm red in colour; (ii) under scalp hematoma present over right parietal region of size 2 cm x 1 cm red in colour, (iii) subarachnoid hemmorrhage present over right parito occipetal region of brain of size 13 cm x 10 cm red in colour, and (iv) contusion present over right occipital region of size 3 cm x 2 cm red in colour confirmed on cut section.

10. Thus, the evidence on record sufficiently shows that there were several injuries on the person of the deceased noted by the Medical Officer while conducting the postmortem. Admittedly, the deceased was residing in her matrimonial house along with appellants. Though the evidence on record regarding the ill-treatment is general in nature, the fact remains that the death of the deceased occurred in the matrimonial house and the injuries were found on the persons of the deceased and, therefore, Section 106 of the Indian Penal Code would come into play. Death of the deceased is of head injury associated with

poisoning.

11. Thus, there is a sufficient material on record to show that when the deceased was residing in her matrimonial house, her death is caused in a suspicious condition in the matrimonial house.

12. Perusal of Section 389 of the Code of Criminal Procedure, admittedly, shows no specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict. However, the considerations for grant of bail at the pre-conviction stage and post-conviction stage are different. What is really necessary to consider is, whether reasons narrated are existed to suspend execution of the sentence and grant of bail. While considering scope of Section 389 of the Code, the Hon'ble Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and anr, reported in (2023)6 SCC** by referring various earlier judgments held that, "bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in

which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the Code of Criminal Procedure and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach”.

13. In the case in hand, though the evidence as to the ill-treatment is general in nature, the facts remain that the death of the deceased is caused within three months in

her matrimonial house and the death is due to head injury associated with the poisoning.

14. Considering the evidence on record, as far as appellant No.2 is concerned, no specific allegation is levelled against her and as far as her role is concerned, there is a substance in the contention of learned counsel for the appellants. He has pointed out from the judgment impugned that he has many arguable points as far as role of appellant No.2 is concerned. In view of that, the application deserves to be allowed partly and, therefore, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed partly**.

(2) Execution of the sentence of appellant No.2 Sau.Rekhabai w/o Pandurang Borkar is suspended, till disposal of the appeal.

(3) The prayer of suspension of the sentence of appellant No.1 is hereby **rejected**.

(4) Appellant No.2 shall be released on bail on execution

PR Bond in the sum of Rs.50,000/- with one solvent of the like amount.

(5) The R&P is already received. The office to prepare paper book and the appeal be listed for final disposal during regular course.

The application is **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!