



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

CRIMINAL APPLICATION (APPA) No.1042 OF 2024
IN
CRIMINAL APPEAL No.601 OF 2024

(Likhendra s/o. Dhanlal Katre Vs. State of Maharashtra, through PSO, P.S. Goregaon, Tah.
Goregaon, Distt. Gondia)

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

Court's or Judge's orders.

Mr. S.N. Singh, Advocate for applicant.
Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 22nd JANUARY, 2025.

1. By this application the appellant is seeking suspension of sentence and releasing him on bail.

2. The appellant is the original accused who was prosecuted for the offence punishable under Sections 304-B, 498-A read with Section 34 of the Indian Penal Code. After appreciation of the evidence the learned Sessions Judge held the appellant guilty for the offence punishable under Sections 304-B and 498-A of the Indian Penal Code and sentenced him to suffer rigorous imprisonment of 10 years for the offence punishable under Section 304-B of the Indian Penal Code. He is further convicted for the offence punishable under Section 498-A and sentenced to suffer rigorous imprisonment for three years.

3. Being aggrieved and dissatisfied with the same present appeal is preferred by the accused on the ground that there were no specific instances narrated by the prosecution

witnesses as far as demand of dowry and ill-treatment is concerned. Learned counsel for the appellant has also pointed out para Nos.26 and 27 wherein the Sessions Court has also observed that no specific instances are narrated and there is no evidence as to that. He submitted that the death of the deceased is due to asphyxia due to drowning. As far as other evidence is concerned, nothing is on record to show that she was subjected for ill-treatment at the hands of the present appellant for demand of dowry and caused her death. Thus, the appellant has every chance of success in the present appeal. In view of that, the execution of sentence be suspended and the appellant be released on bail. He further submitted that the appeal would take its own time for its final disposal and in the meantime, if sentence is executed then purpose of preferring the appeal would frustrate.

4. Learned Additional Public Prosecutor strongly opposed the said application and submitted that considering that death of the deceased is caused within seven years of marriage and it is also in a suspicious circumstances the trial Court has imposed the conviction. The appeal itself is devoid of merits and, therefore, liable to be dismissed, therefore, the application deserves to be dismissed.

5. After hearing the learned counsel for the appellant and learned Additional Public Prosecutor for the State, perused the entire evidence on record. As far as the evidence of the witnesses is concerned which is pointed out by the present appellant no specific instances of demand of money are narrated. Learned counsel has also pointed out that the informant has received the information from the neighbours that the present

appellant took the victim and thereafter she was not seen alive by any of the person is not proved by the prosecution, as none of the neighbour was examined by the prosecution. He has also pointed out towards para Nos.26 and 27 of the impugned judgment and submitted that he has every chance of success in the present appeal.

6. Admittedly at this stage reappraisal of the evidence is not permissible. However, what to be seen is whether the appellant is successful in pointing out that he has chance of success. This aspect is also dealt by the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary in Criminal Appeal No.1331-1332/2023 decided on 02/05/2023*** along with the connected appeals dealt with the aspect of suspension of sentence in para No.33 which is reproduced hereunder :

33. 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 CrPC 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.

7. In the case in hand, learned counsel for the appellant has pointed out from the impugned judgment as well as from the evidence that he has many chance of success in the present appeal. Considering the same, the appellant has made out a case for suspension of sentence. In view of that, I proceed to pass following order :

ORDER

(i) Criminal Application (APPA) No.1042 OF 2024 is hereby allowed.

(ii) The execution and operation of the sentence imposed in Sessions Case No.97/2017 is hereby suspended till disposal of the appeal.

(iii) The appellant-Likhendra s/o. Dhanlal Katre shall be released on bail on executing PR Bond of Rs.25,000/- with one surety of like amount.

(iv) The appellant shall attend the Sessions Court of the Sessions Judge at Gondia on 5th of every month till disposal of the present appeal.

(v) The Criminal Application (APPA)
No.1042/2024 is disposed of.

CRIMINAL APPEAL No.601 OF 2024.

1. Appeal is already admitted.
2. The record and proceedings is already received.
3. The appeal be listed for final disposal after preparation of the paper-book.

(URMILA JOSHI-PHALKE, J.)