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906criapln33.26

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

**CRIMINAL APPLICATION NO. 250 OF 2026
IN APPEAL/33/2026**

BALAJI DEVIDAS SURYAWANSHI

.....Applicant

VERSUS

THE STATE OF MAHARASHTRA

.....Respondent

Mr. V. D. Gunale, Advocate for the applicant

Mrs. U. S. Bhosale, APP for the respondents/State

CORAM : RAJNISH R. VYAS, J.

DATE : 05th MARCH, 2026

PER COURT :

1. This is an application for grant of bail and suspension of sentence awarded in Sessions Case No.26/2016 by the Additional Sessions Judge, Udgir, Dist. Latur on 08-01-2026 convicting the applicant for commission of offences punishable under Sections 304-B and 498-A of the Indian Penal Code (for short 'the IPC'). The maximum sentence is of 7 years.

2. At this stage, it is necessary to mention here that in operative part clause-1 of the impugned judgment it is stated that conviction is under Section 304-B and 498-A, whereas in operative part clause-2 it is mentioned that the appellant should undergo rigorous imprisonment for 7 years for the offences punishable under

Section 304-A of the IPC. Even the operative part clause-4 speaks about acquittal of the accused Nos. 2 and 3 for commission of offences punishable under Section 304-A & 498-A.

3. Manner in which, said order is passed shows that it was not passed with all seriousness.

4. It is further necessary to appreciate that the charge was framed below Exh.10 on 24-01-2019 in which, it is mentioned that accused are charged for commission of offences punishable under Section 304-B read with Section 34 of the IPC. Nature of allegations and evidence brought on record shows that it was section 304-B of the IPC which would be relevant.

5. Be that as it may, the counsel for the applicant submitted that his conviction under Section 304-B of the IPC awarded is based from the testimony of six witnesses out of which PW-2 is the informant who was mother of the victim and PW-3-brother of the informant.

6. According to him the deceased Swati was married with the applicant in the year 2010 and had died unnatural death in the year 2016. The unnatural death and surroundings circumstances resulted into registration of the first information report No. 45/2016 and consequent the investigation including the arrest of the present applicant along with two accused. The applicant was arrested on 10-

04-2016.

7. Mr. Gunale, learned advocate for the applicant has submitted that according to the case of the prosecution, during the year 2010 till 09-04-2016 all the accused in furtherance of their common intention subjected the victim to physical and mental harassment on the count of non-fulfillment of illegal demand of Rs.10 lakhs, motorcycle and plot. He submitted that the testimony of PW-2-Shashikala, if perused would reveal that she was mother of the victim and has deposed that for two months after the marriage her daughter was treated in proper manner but, thereafter, ill-treatment started. According to the testimony of the PW-2 reason for harassment was payment of less amount of dowry, one motorcycle and purchase of plot. The victim/deceased was thus brought by PW-2 to her house where she stayed for two and half years. Subsequently, a meeting was arranged in which settlement was arrived at and deceased was sent to matrimonial house.

8. PW-2 has stated that thereafter, applicant came to Pune in 2016 and told PW-2 that since he wish to purchase a plot and he requires an amount of Rs.5 lakhs. PW-2 then replied that since she works as domestic service, she would not be in a position to pay. The applicant then told the PW-2 that he would kill her daughter, if the amount is not paid. PW-2 stated that thereafter she received a phone

call after four days and she came to know that her daughter had sustained electric shock and she went to the Government Hospital, Udgir, where she came to know that daughter had passed away. This resulted in registration of first information report.

9. Challenging the testimony of the aforesaid witness, the learned advocate for the applicant submitted that at the time of solemnization of marriage, financial condition of the accused and the deceased was known to each other. The accused/present applicant was working on the post of Teacher and therefore, there was no reason for demanding an amount. He contended that the judgment passed would create a doubt whether the person is convicted under Section 304-A or 304-B of the IPC.

10. He submitted that though PW-2 has stated that initially compromise was arrived at between the family of the applicant and the victim in which Vyankatrao and Baburao were present, but surprisingly, those persons were not examined by the prosecution. He further argued that when the incident had occurred, the present applicant was not at the spot. He further contended that the medical evidence more particularly PW-4's testimony if perused, it would reveal that the dead body was in decomposed condition and even according to said witness postmortem was done after 24 hours of the death. He submitted that nature of injuries would show that such

injuries are possible if person falls on the backside of the head. He then invited my attention to the spot panchanama more particularly Exh.50 and stated that there was stone kept for washing clothes and at that place only dead body of the victim was found. He, therefore, contended that possibility that the victim died due to fall cannot be ignored.

11. Per contra, learned APP submitted that in fact it was the case of the dowry death and testimony of PW-2 is consistent and reliable. She submitted that though other two accused are acquitted, story of the prosecution so far as applicant is concerned, remains in tact.

12. I have gone through the record of the case. As already stated that in the operative part of the judgment it is mentioned that the applicant is convicted for commission of offences punishable under Sections 304-B whereas while awarding the sentence it was stated that the applicant was sentenced for commission of offences punishable under Sections 304-A of the IPC.

13. Be that as it may, testimony of PW-2 would show that initially there were talks of compromise in which two independent witnesses have participated. These two independent witnesses were not examined. The argument of the learned APP will have to be tested whether the demand of Rs. 5 lakhs was convincing or not since

the applicant was working as a Teacher and PW-2 was doing domestic work. The financial condition of the parties were known to each other at the time of marriage. The applicant was on bail through out the trial and it is not even the case of the prosecution that the applicant has misused the liberty. Further testimony of PW-4 shows that injuries are possible if persons falls on the backside on the head. The spot panchanama shows that stones for washing clothes near the dead body were found. Admission of PW-4 in the cross-examination that possibility of death due to head injury cannot be denied in the instant case, also shows that there are good grounds in the appeal. The applicant is presently 44 years of age and sentence imposed upon him is of fixed terms. The applicant has deposited the fine amount and after pronouncement of judgment of conviction he has surrendered to the custody of the court. Once the appeal is decided, otherwise, the applicant can be called upon to undergo the remaining sentence. Since the arguable points are made out and considering the fact that the sentence is of fixed terms and in view of pendency of the old appeals, the appeal cannot be decided in near future, I am inclined to pass the following order:

ORDER

- a] The application stands allowed.

b] The sentence imposed upon the applicant in Sessions Case No.26/2016 by the Additional Sessions Judge, Udgir, Dist. Latur on 08-01-2026 for commission of offences under Sections 304-B and 498-A of the IPC is here by suspended till the decision on appeal.

c] The applicant shall be released on the same terms and conditions as imposed by the trial court.

[RAJNISH R. VYAS, J.]

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