



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.1242 OF 2024
IN
CRIMINAL APPEAL NO.664 OF 2024

Saiyyad s/o Mohasin Saiyyad Asif and another
Vs.

State of Maharashtra, through Police Station Officer, Police Station Civil
Lines, Akola, District Akola

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

Court's or Judge's orders

Mr. R. J. Mirza, Advocate for the appellants/applicant.
Mr. S. S. Hulke, APP for the State.

CORAM : URMILA JOSHI-PHALKE AND
NIVEDITA P. MEHTA, JJ.
DATED : 17/04/2026

1. By this application, the applicant No.1 is seeking suspension of sentence and grant of bail. By the impugned judgment and order dated 22.10.2024 passed by the learned Additional Sessions, Judge Akola in Sessions Case No.166/2015 convicted the applicant No.1 and the co-accused for the offence punishable under Section 302 read with Section 109 of the Indian Penal Code and sentenced them to suffer life imprisonment and to pay fine of Rs.5,000/- and Rs.3,000/- respectively. The co-accused is already released on bail by suspending the sentence in Criminal Application (APPA) No.1128/2024 by order dated 10.12.2024.

2. Learned counsel appearing on behalf of applicant submits that the applicant No.1 and co-accused have been convicted by the learned Additional Sessions Judge on the

basis of dying declaration. The prosecution placed reliance on three dying declarations and the said dying declarations were inconsistent one. It is submitted that in first dying declaration, she specifically stated that she sustained burn injuries as she ablaze herself, whereas in other two dying declarations which were on latter point of time, the deceased blamed the present appellant/applicant as well as also other co-accused i.e. mother-in-law. It is submitted by him that even those two subsequent dying declarations are not consistent. The applicants were on bail during the trial and there is no grievance that he has misused the said liberty and therefore, the execution of the sentence be suspended and the appellant/applicant be released on bail.

3. Per contra, the learned APP for the State has submitted that the learned trial Court has dealt with all three dying declarations and hence recorded finding of conviction holding the present appellant/applicant as guilty for setting her ablaze. According to him, earlier dying declaration was recorded when accused were present, whereas the subsequent two dying declarations were recorded after relatives of the deceased reached to the hospital. Thus, the judgment is very well reasoned and there is no chance of the appellant to succeed in the appeal, hence, the application deserves to be rejected.

4. Having heard the learned counsel for the applicants and learned APP for the State and perused the impugned judgment and depositions on record. In the first dying declaration it shows that she ablaze herself, whereas in other two dying declarations, she alleges that it was the present

applicant and other co-accused who ablaze her by setting her on fire and thereby her first statement was due to the pressure of the present applicants and the other family members. Admittedly, the second dying declarations were recorded after arrival of the relatives.

5. With the able assistance of both counsel, we have perused the dying declarations, in one dying declaration she has specifically stated that in one incident her mother-in-law had asked the applicant to burn the deceased which occurred prior to the present incident. In another dying declaration which has been again recorded by the Investigating Officer, the deceased assigned no role of the co-accused except her presence at the time of incident. Thus, considering in consistent dying declarations, there are arguable points for the learned counsel for the applicants.

6. The aspect of the suspension of sentence is considered by the Hon'ble Aepx Court in the case of **Omprakash Sahni vs Jai Shankar Chaudhary and anr ETC** in **Criminal Appeal Nos.1331-1332/2023**, by considering the earlier decisions and it is held that "Bearing in mind the 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. 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 light of the above observation of the Hon'ble Apex Court, if the facts and the evidence of the prosecution are taken into consideration and the submissions made by the learned counsel pointing out the inconsistent dying declarations. Admittedly, there are arguable points for the applicant and in view of that, there are chances for the applicant for the acquittal. In such circumstances, in view of the observation of the Hon'ble Apex Court, it would not be appropriate to keep him behind the bar for a long time, till the conclusion of the appeal. Admittedly, the appeal would take its own time for its final disposal. In view of that, the application deserves to be allowed. Accordingly, we proceed to pass an order:

ORDER

- (i) The application is **allowed**.
- (ii) Pending appeal, execution of substantive sentence recorded by the learned Additional Sessions Judge, Akola in Sessions Case No.166/2015 in respect

of the applicant Saiyyad s/o Mohasin Saiyyad Asif shall remain suspended.

(iii) The applicant – Saiyyad s/o Mohasin Saiyyad Asif shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) During the pendency of the appeal, the applicant/appellant shall attend the Court i.e. Additional Sessions Judge, Akola.

(v) The learned Additional Sessions Judge Akola, shall mark his presence on 5th of every month till disposal of appeal.

(vi) The applicant/appellant shall furnish on record his detailed address along with the names of his two relatives and their address proof.

The application is disposed of.

(NIVEDITA P. MEHTA, J)

(URMILA JOSHI-PHALKE, J)