IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 460 OF 2024

IN

CRIMINAL APPEAL NO. 1148 OF 2022

Sou. Malti Ramkrishna Mhatre,
Aged : 56 years, Occ.:Housewife,
Residing at Kasarbhat, Post-Aajiwali,
Taluka-Pen, District-Raigad,
(At present in Aurangabad Jail). .....Applicant
(Orig. Accused No. 3)

Vs.

1. The State of Maharashtra
At the instance of New Panvel
Police Station vide their C. R.
No. 153 of 2015.

2. Hiraman Chahaya Tawari,
Age : 60 years, Residing at
Post-Rave, Taluka-Pen, District-Raigad. .....Respondents

Mr. Rahul Arote for the Applicant.
Mr. Anand S. Shalgaonkar, A.P.P. for the Respondent-State.

CORAM: A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON: 30th JULY 2024.
PRONOUNCED ON: 20th AUGUST 2024.

ORDER (*Per Dr. Neela Gokhale, J.*) :-

1) This is an Application for suspension of sentence and releasing the Applicant on bail during the pendency of her Appeal.

1.1) Applicant is the original Accused No. 3/mother-in-law in Sessions Case No. 198 of 2016. By a Judgment and Order dated 28th September 2022, the Additional Sessions Judge, Panvel-Raigad held both

the Appellants (mother-in-law and husband of the deceased) guilty for the offense punishable under Sections 302, 304-B & 498-A read with 34 of the Indian Penal Code, 1860 (I.P.C.). The Applicant is sentenced to suffer rigorous imprisonment for life for the offense punishable under Section 302 of the I.P.C. and to pay fine of Rs. 25,000/- each and in default of payment of fine, to suffer one year of simple imprisonment. She has also been sentenced to suffer seven years of rigorous imprisonment for the offense punishable under Section 304-B of the I.P.C. and simple imprisonment of three years and fine of Rs. 5,000/- each for the offense punishable under Section 498-A of the I.P.C. All the sentences are directed to run concurrently.

2) This is a second application preferred by the Applicant seeking suspension of her sentence and enlargement on bail, pending the hearing and final disposal of the Appeal. By an Order dated 20th March 2023, the Applicant's first bail application was dismissed as withdrawn with liberty to file a fresh application in the event the Appeal is not heard within a period of one year from the date of Order. The Appeal being still pending, the Applicant has filed the present interim application for bail.

3) The prosecution case in brief is that, the Applicant and other three co-accused were put to trial in the Court of Additional Sessions Judge, Panvel-Raigad. The Applicant was original Accused No. 3 being mother-in-law of the deceased/victim-Mrs. Jyoti and the Appellant No. 1 (original

Accused No. 1), the husband of Jyoti. The Accused Nos. 2 & 4 were the father-in-law and brother-in-law of Jyoti respectively.

3.1) The case of prosecution as narrated in the Judgment and Order impugned herein is that, Jyoti and Accused No. 1 married on 2nd May 2015. The informant is Jyoti's father namely Hiraman. Jyoti was ill-treated by all the accused. Within seven months of her marriage, the Accused Nos. 1 to 3 set her on fire, which caused her death. It is the defence of the accused that, they were not present in the house and she died due to burns and suffocation.

3.2) In the course of trial, the prosecution examined twelve witnesses and the trial Court, upon evaluation of the oral as well as documentary evidence in the final analysis held the prosecution to have proved its case beyond reasonable doubt against Accused Nos. 1 & 3 for committing murder of the deceased.

4) Mr. Rahul Arote, learned counsel appears for the Applicant and Mr. A. S. Shalgaonkar, learned A.P.P. represents the State.

4.1) Mr. Arote submitted that, the trial Court proceeded on the basis of guilt against the Applicant and the co-accused right from the beginning and thereafter sought to justify the evidence against them without assessing the circumstances independently. He stated that, the F.I.R. itself is tainted with malafide and the alleged demand of dowry is not even mentioned in the F.I.R. The trial Court has ignored the law spelt out by the Apex Court in

such matters. He also contends that, the Applicant was given liberty to once again approach for bail if her Appeal was not taken up within one year. Mr. Arote submitted that, the Applicant has suffered incarceration for about 9 years and hence she is entitled to be released on bail.

4.2) Mr. Shalgaonkar, learned A.P.P. opposed the application submitting that, no error can be said to have been committed by the trial Court. In any case she has not suffered incarceration for even 10 years as per the decision of the Supreme Court in the case of *Soudan Singh Vs. State of Uttar Pradesh*[1]. He also submits that, the offense is serious in nature and the accused including the Applicant have brutally taken the life of young bride within seven months of the marriage and does not deserve leniency.

5) We have heard the learned counsels appearing for the parties and have gone through the material on record.

6) Perusal of evidence of Suresh Mhatre (PW-7) disclosed that, he is a witness to the last seen theory propounded by the prosecution. He testified that, on the fatal day and time he and his wife, while crossing from the house of the accused, heard chaos. They noticed the Applicant herein going away from the house. A crowd had gathered in front of the house and the Accused No. 1-husband of Jyoti was standing in front of the house wearing a bermuda pant. From the rear of the house, they noticed fumes coming out of the room. That room was locked from outside, however one

1. 2022 SCC OnLine SC 697.

window was open. From this window they saw Jyoti in a burnt condition. He says that, Jyoti's parents also came and also witnessed the scene of incident. After opening the room, they found Jyoti dead. His testimony was not rebutted in the cross-examination.

7) The PW-8 namely Sangeeta, a neighbour and witness also testified that, on the date and time of incident, she and Asha Gawand heard shouts from the house of accused. They also heard Jyoti crying to be saved. She called Jyoti's father on somebody's phone and informed him about the incident. When they opened the door, they found Jyoti in burnt condition and dead. She thus corroborated the testimony of Suresh Mhatre, PW-7.

8) The evidence of Dr. Mahesh Bhadnge, the Medical Officer who performed autopsy on Jyoti, also indicates that, the dead-body was burned upto 89%. According to this witness, he noticed intact soot particles in the trachea lumen. According to him this means that, the person was alive at the time of being burnt. The cause of death was 'shock due to superficial to deep burn injuries'. This statement indicates that, the young girl was burnt alive. The doctor specifically denies noticing any symptoms of suffocation thereby negating the defence of the accused that Jyoti died of suffocation.

9) The deposition of Investigating Officer reveals that, he found that Jyoti's body was burnt and her hands and legs were restrained by ropes and half burnt clothes were stuck to her body. He noticed a hearth on which the body of Jyoti was lying. He also noticed a plastic can of

kerosene, two half burnt match-sticks, pieces of broken bangles and half burnt clothes.

10) From the overall conspectus of the matter it is clear that, Jyoti was burnt alive within seven months of her marriage raising the presumption of Section 113-B of the Indian Evidence Act, against the accused. There is a history of ill-treatment and cruelty to Jyoti. There is no material which can remotely demonstrate a plausible belief that Jyoti died due to suffocation as carbon monoxide gas accumulated in the room, as per the defence of accused. This has been specifically negated by the Medical Officer. The chemical analysis report also detected kerosene residues on burnt clothes. Thus, all the oral as well as documentary evidence leaves little doubt that, there is anything palpable or apparent on the face of record based on which this Court can come to the conclusion that, the conviction is not sustainable in law and that, the convict has a fair chance of succeeding in her Appeal. It is difficult for us at this stage to find fault with the Judgment and Order impugned in the Appeal.

11) The Supreme Court in its recent decision in the case of *Shivani Tyagi Vs. The State of Uttar Pradesh and Another*[2] has observed as under :

> "*9. ...We are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively*

2. 2024 SCC OnLine SC 842.

and such consideration should reflect in the consequential order passed under Section 389, Cr.P.C. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.P.C. without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. PC, likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr.P.C. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be

suspended during the pendency of the appeal and the appellant(s) should be released on bail."

12) The offense held to have been committed by the Applicant is serious. From the evidence on record it appears that, the Applicant and her son had deliberately and ruthlessly restrained the hands and legs of the deceased to control her movements. Then they doused her with kerosene and set her alight. Undoubtedly the manner of commission of this act is brutal. The Applicant has suffered only about 9 years of incarceration against her life sentence. The life of a young girl having a promising future has been prematurely snuffed out by the accused. It is thus not desirable to suspend the sentence of Applicant and enlarge her on bail in view of the facts, circumstances, deposition of witnesses adduced as well as the evidence appreciated by the trial Court.

13) From the observations of the Supreme Court in various precedents including that of *Shivani Tyagi* (*supra*) it is clear that, while undertaking the exercise to ascertain whether the Applicant has fair chance of acquittal, what is to be looked into is something palpable. From the strict perusal of the appreciation of evidence by the trial Court, we have neither found anything which is very apparent or gross on the face of the record, nor have we found any noticeable and perceivable error in the findings of trial Court. For this reason, we are unable to accept the contention of Mr. Arote that, it would be meaningless, improper and unjust

to keep the Applicant behind bars for a further period than that which has already undergone till the disposal of her Appeal. We are thus not inclined to suspend the sentence of the Applicant and grant her bail during the pendency of the Appeal.

14) We may hasten to add that, regarding the merits of the Appeal by the Applicant against her conviction, we shall not be understood to have held or made any observation as it is a matter to be considered on its own merits in the pending Appeal.

15) The Application is accordingly dismissed.

(DR. NEELA GOKHALE, J.) (A. S. GADKARI, J.)