

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

CRIMINAL APPLICATION NO. 362 OF 2015

Deepak S/o Pandharinath Lipane

.... **APPLICANT**

V E R S U S

The State of Maharashtra & Anr.

.... **RESPONDENTS**

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Mr. R.V.Gore, Advocate for Applicant.

Mr. U.H.Bhogale, A.P.P. for R- 1 State.

Mr. B.N.Palve, Advocate for R - 2.

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CORAM : V.M.DESHPANDE, J.

DATE : 27th MARCH, 2015

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PER COURT :

1. This is an application for cancellation of anticipatory bail granted in favour of respondent No. 2 by the learned Additional Sessions Judge -2, Ahmednagar on 16/06/2014 in Criminal Misc. Application No. 655/2014.

2. Anticipatory bail was granted by the learned Additional Sessions Judge -2, Ahmednagar in Crime No. 125/2014 registered with police station Pathardi, Dist. Ahmednagar for the offence punishable U/s 498-A, 307, 302

read 34 of the Indian Penal Code. According to the learned counsel for the applicant, learned trial Court ought not to have granted anticipatory bail in favour of respondent No. 2.

3. It is not in dispute that the learned trial Court granted anticipatory bail in favour of respondent No. 2, the investigation was almost at the completion stage and only formality of filing charge sheet was remained to be done.

4. Learned counsel for the applicant invited my attention to the dying declaration of deceased Anita, wife of respondent No. 2. First dying declaration was recorded on 06/05/2014 and another dying declaration was recorded on 27/05/2014.

In the first dying declaration dated 06/05/2014, role is attributed against respondent No. 2 that he has poured kerosene on the person of deceased Anita and set her ablaze. However, in the dying declaration dated 27/05/2014, deceased Anita has stated that she has received burn injuries due to accident.

5. According to the learned counsel for the applicant when there are two dying declarations available on record, one implicating respondent No. 2 and another absolving respondent No. 2, learned Court below ought not to have granted anticipatory bail, since during the trial the authenticity and admissibility of two dying declarations will be considered by the trial Court.

6. By now law on the dying declaration is settled. When there are multiple dying declarations available on record contrary to each other, the principle is that the Court should not use the principle “ pick and choose ”. In the present case, two dying declarations were available on record when the anticipatory bail application of respondent No. 2 was considered by the Court below. In that view of the matter, I see no reason to interfere with the discretion exercised by the learned trial Court in granting anticipatory bail to respondent No. 2.

7. Hence, the present Criminal Application is rejected.

[V.M.DESHPANDE, J.]