

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

CRIMINAL APPLICATION NO. 1767 OF 2015

Raju s/o Vitthal Pawar

.... APPLICANT

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mrs. M.D.Thube-Mhase, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

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CORAM : V.M.DESHPANDE, J.

DATE : 21st APRIL, 2015

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PER COURT :

1. This is an application for bail. The applicant is arrested on 26/11/2014 in connection with Crime No. 90/2014 registered with Pishor police station, Dist. Aurangabad for the offence punishable u/s 302 read with 34 of the Indian Penal Code.

2. Heard Mrs. M.D.Thube-Mhase, learned counsel for the applicant and Mr. A.S.Shinde, learned A.P.P. for respondent – State.

3. Investigating Officer has already filed charge sheet before the Court of law.

4. Crime is registered on the basis of dying declaration of Pooja, wife of the present applicant at Ghati hospital, Aurangabad by the Special Executive Magistrate. As per the said dying declaration, on the day of the incident, deceased was standing out side her house. That time, applicant has enquired with her as to why she is looking towards a boy and, therefore, he assaulted her, poured kerosene on her person and set her ablaze. Pooja died on 22/11/2014.

5. In the charge sheet, there are statements of two witnesses by name Rameshwar and Tatyarao. Their statements show that on the date of incident, they brought deceased Pooja in the hospital and while they were bringing her in Indica car, it is disclosed to them by deceased that on the day of incident, she was beaten by her husband and, therefore, in a heat of anger, she poured kerosene on her person and set her ablaze. Further, it is clear from the statements of these prosecution witnesses that the present applicant was also having burn injuries on his hand and not only that both the deceased and present applicant were admitted in the hospital.

6. Upon enquiry made to learned A.P.P. about admission record of the present applicant and the extent of the burn injuries on the hand of the applicant, he has submitted

that Investigating Officer has not collected such record and it is not filed. Rameshwar and Tatyarao are the persons, who were in company of deceased first in time. Not only that, they were in her company but they brought her from the place of occurrence and admitted her in the hospital. The statement made to them, which is oral dying declaration, clearly shows that she has committed suicide. Thus, in the present prosecution case, two versions are appearing - (I) deceased Pooja committed suicide on the basis of oral dying declaration made to two prosecution witnesses and (ii) the death is homicidal in nature.

7. Since charge sheet is already filed and two versions are appearing in the prosecution case, it will not be in the fitness of things to continue the applicant in jail.

8. Hence, I pass the following order :

(i) Present Criminal Application is hereby allowed.

(ii) Applicant Raju s/o Vitthal Pawar be released on bail in connection with Crime No. 90/2014 registered with Pishor police station, Dist. Aurangabad for the offences punishable u/s 302 read with 34 of the Indian Penal Code on he executing P.R. Bond of Rs. 10,000/- [Rupees Ten Thousand] with one solvent surety of like amount. Bail before the trial Court.

(iii) Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 1767.2015