

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

CRIMINAL APPLICATION NO. 1984 OF 2015

Saudagar Digambar Jagdale

.... APPLICANT

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. Joydeep Chatterji, Advocate for Applicants.

Mr. A.V.Deshmukh, A.P.P. for Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE : 29th APRIL, 2015

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PER COURT :

1. By the present application, applicant is seeking his release on bail in connection with Crime No. 229/2014 registered with police station Shivajinagar, Dist. Latur for the offences punishable u/s 302,498 (A) read with 34 of the Indian Penal Code.

2. Heard Mr. Joydeep Chatterji, learned Counsel for the applicant and Mr. A.V.Deshmukh, learned A.P.P. for respondent – State in extenso.

3. Present applicant is brother-in-law of deceased Sonali. Her marriage took place with Dr. Shivdas, the brother of present applicant on 30/05/2010. From the said wedlock, she is having one daughter.

4. Crime is registered against present applicant, husband Shivdas, father-in-law and mother-in-law on the basis of dying declaration of Sonali, which was recorded on 03/12/2014.

5. Investigation is over. Charge sheet contains two dying declarations of Sonali. First dying declaration is dated 03/12/2014. It is recorded at 9.50 a.m. and the recording of said dying declaration was completed at 10.15 a.m.

Another dying declaration is also dated 03/12/2014. However, it was scribed by Special Executive Magistrate. The said is recorded in between 10.30 a.m. and 11.00 a.m. Both these dying declarations preceded the examination of Sonali by Doctor, who found the patient to be in the condition to give her statement. Dying declaration of Sonali specifically attributes role to the present applicant that he has poured kerosene on her person and set her ablaze. Both the dying declarations are not at variance in so far as the role attributed to the present applicant is concerned.

6. In the back-drop of the aforesaid two dying declarations, which specifically attributes role against present applicant, learned counsel for the applicant submitted that the prosecution has suppressed the dying declaration of Sonali,

which, according to learned counsel, is probably in favour of the applicant. In order to buttress his submission, learned counsel took me through the entire charge sheet.

7. While deciding the application for bail, it is not expected from the Court to evaluate the prosecution case in its minute detail. However, at the same time, the Court is bound to go through various documents appended to the charge sheet.

8. Date of the incident is 30/11/2014. Date of death of Sonali is 04/12/2014. Charge sheet shows that Sonali was brought to the casualty of Govt. hospital on 30/11/2014 at 10.30 p.m.

Charge sheet further shows that Sonali was admitted in burn ward No. 20 as indoor patient. Her medical papers shows that attending Doctor on 01/12/2014 requested Casualty Medical Officer on duty to arrange to record the statement of patient, as she is conscious, oriented at that time. Case papers of patient also shows that Casualty Medical Officer has taken note of the same and the police were informed in that behalf at 8.00 p.m.

Charge sheet contains communication from Casualty Medical Officer to the police station Officer of police station Gandhi Chowk dated 01/12/2014 and time is 8.00 p.m. By the said communication, Casualty Medical Officer requested the police authority to record statement of Sonali, who was admitted as indoor patient in the hospital.

Pursuant to this, it appears from the charge sheet

that police constable immediately reached to the hospital and he gave requisition to Casualty Medical Officer and requested for examination of patient, since he was intending to record her statement. On the said memo itself, at the top, Doctor, who has examined Sonali, has given endorsement to the effect that patient is conscious and oriented. The noting is dated 01/12/2014 at 9.15 p.m. This particular noting is also substantiated and corroborated by the noting of the Doctor in the bed head ticket of Sonali, which shows that on 01/12/2014 at 9.30 p.m., patient was conscious and oriented.

What is important to note is the memo which was given by the police constable to the Casualty Medical Officer requesting for examination of patient, since he was intending to record her statement and which is having noting of Doctor at the top of said memo about the fitness. There is note of police constable at foot of said memo. The noting of police constable reads as under :

“ साहेबांच्या आदेशाने आम्ही जबाब घेण्यासाठी आलो
असता त्याने मला काही एक सांगायचे नाही असा
थोडक्यात जबाब त्यांच्या नातेवाईकाला समोर दिला
आहे. ”

Thus, from the said, police constable who reached firstly to the hospital in order to record the dying declaration of Sonali, has endorsed as above.

My attention is also drawn to page No. 266 of the charge sheet, which is ' high risk consent form ' of Govt. Medical College and General Hospital, Latur burn ward. The

same is in tabular form. First column is in respect of date, second column is the name, third column is relation and fourth is signature. Said ' high risk consent form ' shows that it is in respect of date from 01/12/2014 to 04/12/2014. At 1.50 a.m. on 01/12/2014, presence of Ravikiran Pawar is noted, who is brother of Sonali, whereas at 10.00 p.m., presence of Rajendra Pawar, father of Sonali is noted. These two are of dated 01/12/2014. Rajendra Pawar and Ravikiran Pawar had duly signed opposite their names in the ' high risk consent form '.

Further, statement of Rajendra Pawar, father of Sonali, shows that on 30/11/2014 itself, he received intimation at 10.00 p.m. on telephone about burning incident. That leads him to proceed immediately to Latur. His statement would reveal that he reached on the same day at Govt. hospital in between 11.00 p.m. to 11.30 p.m. From the noting on ' high risk consent form ', it is clear that Ravikiran Pawar was present in the hospital on 01/12/2014 at 1.50 a.m. Therefore, in this back-drop, the noting which is reproduced supra in vernacular at page 106 of the charge sheet assumes much importance.

9. Thus, it is clear that as per the said noting, patient did not give any statement. From the said noting, it is clear that some statement of Sonali was recorded. However, for the reasons best known to the prosecution, the said statement is not coming on record.

10. Crime is registered on 03/12/2014. Statement of

Sharad Chavan is available in the charge sheet. Sharad Chavan is lawyer by profession. He is cousin of deceased Sonali. His statement would reveal that on 30/11/2014 at 10.30 p.m., father of deceased made him telephone and intimated that Sonali has received burn injuries and, therefore, he was asked to go to the place of Sonali for getting information. His statement would further reveal that when he reached to the house of Sonali, it was informed to him that Sonali was already taken to the hospital and, therefore, he also went to the hospital. In the mean time, father of Sonali and his other family members also came. Statement of Sharad Chavan and also the statement of Rajendra Pawar would reveal that oral dying declaration was made to them by Sonali attributing specific role to the present applicant. Statement of Rajendra Pawar is recorded on 03/12/2014, whereas statement of Sharad Chavan is recorded on 04/12/2014. Thus, the father of deceased and Sharad Chavan, who is lawyer by profession, were knowing on 30/11/2014 itself that present applicant is the author of the burn injuries. Therefore, the matter ought to have been reported immediately to the police. However, the matter was not reported and it is only after recording the dying declaration on 03/12/2014, crime is registered.

11. In this back-drop, we have statement of Shivdas, husband of Sonali, who also received 52 % burn injuries. His statement was recorded on 01/12/2014 itself. His statement would reveal that due to unexpected flaming of stove, Sonali received burn injuries and in order to save Sonali, he also

received 52 % burn injuries.

12. Thus, the cumulative effect of the aforesaid *prima facie* survey of the prosecution case leads the Court to reach to the conclusion that the important document like statement of Sonali dated 01/12/2014 is not coming on record. Further, the entire case of the prosecution is based on dying declaration. The investigation is already over. Charge sheet is filed. Therefore, in the above back-drop of the prosecution case, this Court is of the view that further custodial presence of the applicant is not at all required and he needs to be released on bail.

13. Hence, I pass the following order :

(i) Present Criminal Application is hereby allowed.

(ii) Applicant Saudagar Digambar Jagdale be released on bail in connection with Crime No. 229/2014 registered with police station Shivajinagar, Dist. Latur for the offence punishable u/s 302,498 (A) read with 34 of the Indian Penal Code on he executing P.R.Bond of Rs. 50,000/- [Rupees Fifty Thousand] with two solvent sureties of like amount. Bail before the trial Court.

(iii) It is made clear that the observations made in this order are *prima facie* in nature and those

are made only for the decision of the present application for bail and the learned Judge, who shall be conducting the trial, shall not get influenced by any of such observation.

(iv) With these observations, present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]