

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

CRIMINAL APPLICATION NO.2069 OF 2015 IN
CRIMINAL APPEAL NO.367 OF 2015

Badrinath s/o Tukaram Shinde ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri N.S. Ghanekar, Advocate for applicant
Shri K.S. Patil, A.P.P. for the respondent/ State
.....

CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 29th July, 2015.

ORAL ORDER :

1. Heard the counsel appearing for the applicant. He invited our attention to the dying declaration at Exh.79 and submits that, the specific overt act is attributed to the mother-in-law, however, she is acquitted. He further submits that, even if the contents of the dying declaration are read in its entirety, what is stated is that the wife had suspicion about the husband,

however, no specific overt act is attributed. It is submitted that, the dying declaration at Exh.101 cannot be read in evidence since the A.S.I. who recorded the dying declaration was not examined by the prosecution. He further submits that, the oral dying declarations are not relied upon by the trial Court. It is further submitted that, the defence taken by the applicant was probable in the sense that the wife committed suicide. It is submitted that, the applicant tried to extinguish the fire and, therefore, according to the learned counsel appearing for the applicant, the applicant is entitled for bail since he was on bail during the pendency of trial.

2. On the other hand, learned A.P.P. appearing for the State invited our attention to the notes of evidence. He submits that, belated attempt of the applicant husband to take the victim to the hospital after 4 ½ hours of the incident reflects the conduct of the husband and the accused persons. It is submitted that, if the evidence on record is considered in its entirety, the alleged incident had taken place at about 3.30 to 4.00 a.m., the husband was very much present in the house. The conduct of the husband is required to be seriously viewed since there was no attempt to extinguish the fire. Therefore, according to the learned A.P.P. the findings recorded by the trial Court are

sustainable, therefore, the application for bail is required to be rejected.

3. We have heard the counsel appearing for the applicant and the learned A.P.P. appearing for the State. We have perused the notes of evidence. The trial Court, while considering the prosecution case, has relied upon the circumstances which are narrated in para 56 of the judgment. It is not in dispute that the incident had taken place early in the morning at 3.30 to 4.00 a.m. in the house of applicant. Admittedly the death occurred within seven years from the marriage. Therefore, presumption under Section 113-B and also Section 304-B of the Indian Penal Code is available to the prosecution. Apart from that, abnormal conduct of the husband has also been taken into consideration by the trial Court. Prima facie the findings recorded by the trial Court appears to be in consonance with the evidence on record. No case is made out for entertaining the application for bail. Upon perusal of Exh.79, it is not a case that there is no mention of the applicant in the said dying declaration. It has come on record that the incident had taken place at 4.00 a.m. and the victim, realizing that she is suffering from some fire, got up and, therefore, merely because said dying declaration specifically does not attribute overt act to

the applicant is no reason to entertain the application for bail at this stage. Hence the application stands rejected.

4. Learned counsel appearing for the applicant makes oral prayer to allow him to file the private paper book. Prayer granted.

5. After filing the private paper book, liberty to the counsel appearing for the appellant to mention for early hearing of the appeal.

6. Registry to send back the original record and proceedings to the Sessions Court, Vaijapur. Upon receiving the original record and proceedings, registry of the Sessions Court, Vaijapur to prepare Paper Book and send the same along with the original record and proceedings to the registry of this Court as expeditiously as possible, however, within four months from today.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)