

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2296 OF 2015

IN

CRIMINAL APPEAL NO.389 OF 2015

- 1) Bhausahab Waman Shinde,
Age-60 years, Occu:Labour,
- 2) Nirmalabai Bhausahab Shinde,
Age-51 years, Occu:Household,
- 3) Vijay @ Nilesh Bhausahab Shinde,
Age-27 years, Occu:Hawker,

All R/o-Padhegaon, Tq-Shrirampur,
Dist-Ahmednagar.

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.S.J. Salunke Advocate for Applicants.
Mr.A.V. Deshmukh, A.P.P. for Respondent.

...

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

DATE : 11TH AUGUST, 2015

ORDER :

1. Heard the counsel appearing for the

Applicants. He submits that all the Applicants were on bail during pendency of the trial. He further submits that Applicant Nos.1 and 2 are about 60 years of age. It is further submitted that if Dying Declaration Exhibit 23 is perused carefully, it appears that the same was not read over to the declarant and she has not stated that the same is as per her narration. Therefore, no reliance can be placed on the contents of the said Dying Declaration according to the counsel. He further submits that so far as Dying Declaration Exhibit 30 is concerned, there is no endorsement of the medical officer at the end of the Dying Declaration that through out the said Dying Declaration, declarant was in fit medical condition and well oriented to give such Dying Declaration. He further submits that oral Dying Declarations are not believable. Benefit of doubt is given to sister-in-law and therefore the present Applicants are also entitled for benefit of doubt. Therefore, he submits that Application

deserves to be allowed.

2. On the other hand, the learned A.P.P., relying upon the findings recorded by the trial Court, submits that both the Dying Declarations have been properly considered by the trial Court. The Dying Declaration Exhibit 30 gets corroboration from the oral Dying Declaration given by the deceased to PW-2 Laxmibai. The medical evidence unequivocally indicates that death of deceased was homicidal. Therefore, Application for bail may be rejected.

3. We have given careful consideration to the submissions made by the counsel appearing for the Applicants/Appellants and learned A.P.P. appearing for the State. We have perused the original Record and in particular, contents of the Dying Declarations at Exhibit 23 and Exhibit 30. Dying Declaration Exhibit 23 is recorded by the Executive Magistrate, which is in question and

answer form. In the said Dying Declaration, deceased stated that her husband, mother-in-law, father-in-law and sister-in-law set her on fire. The said version appears to be brief in nature. The said Dying Declaration is criticized by the counsel appearing for the Applicants on the ground that said Dying Declaration was not read over to the declarant i.e. deceased, and therefore the same could not have been read in the evidence by the trial Court. For the purpose of deciding present Application for bail, for a while, we assume that said Dying Declaration could not have been read in evidence by the trial Court, nevertheless the contents of the Dying Declaration at Exhibit 30 unequivocally demonstrates overt-acts attributed qua each of the Applicants and same gets corroborated from the evidence of PW-2 Laxmibai, in as much as declarant i.e. deceased made oral Dying Declaration with the PW-2. Apart from corroboration from the evidence of PW-2, the prosecution examined PW-7 ASI Khemnar, who

recorded the Dying Declaration Exhibit 30 and PW-8 Dr. Ravindra Jagdhane, who gave endorsement on the said Dying Declaration that declarant was in fit mental condition to give such Dying Declaration. Their evidence unequivocally indicates that deceased made categorical statements before them and upon verifying her mental and physical fitness to give such Dying Declaration, said Dying Declaration was recorded. Therefore, prima facie, findings recorded by the trial Court appear to be in consonance with the evidence brought on record by the prosecution. Since the Appeal filed by the Appellants/Applicants is pending for hearing, we refrain ourselves from elaborating further on the evidence.

4. In that view of the matter, no case is made out for allowing the Application for bail. The Application stands rejected.

5. The Registry of this Court to send back

the original Record and Proceedings to the Registry of Sessions Court, Shrirampur. Upon receiving original Record and Proceedings, the Registry of the concerned Court to prepare the Paper-Book and send it back to the Registry of this Court, as expeditiously as possible, however within THREE MONTHS from the date of receiving the original Record and Proceedings from the Registry of this Court.

6. After receiving the Paper-Book and original Record and Proceedings, liberty to the counsel appearing for the Applicants/Appellants, to move for early hearing of the Appeal, since according to the counsel appearing for the Applicants, two of the Applicants/Appellants are senior citizens.

[A.I.S.CHEEMA, J.]

asb/AUG15

[S.S.SHINDE, J.]