

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 2646 OF 2015
IN APEAL/427/2015 WITH APEAL/427/2015**

GOVIND S/O NARAYAN BACHUTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Ghanekar Nilesh S.
APP for Respondent/State : Mr. K.S. Patil

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: August 26, 2015

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ORAL ORDER (PER A.M. BADAR) :-

By this application under Section 389 of the Code of Criminal Procedure, 1973, applicant- original accused nos. 2, 3 and 4, who were on bail during the trial, are praying for suspending the sentence and releasing them on bail.

2. Heard the learned counsel appearing for the applicants/appellants-accused. According to learned counsel for the applicants, the dying declarations made by deceased Jayshree are not consistent and sole eye witness to the incident in question, has not supported the prosecution case. It is contended that, the accused-appellants are residing far away from the place of incident.

In view of the evidence adduced by the witnesses, the presence of the accused-appellants on the spot become doubtful.

3. Per-contra, the learned Additional Public Prosecutor appearing for the Respondent/State, after drawing our attention to the Record and Proceedings submitted that, mode and manner of commission of offence as deposed by deceased in her very first dying declaration, which categorically imputes role of each of the applicants in the alleged crime. Hence according to his submission, after due trial, the guilt of the appellants is established, and therefore, they are not entitled for release on bail.

4. Having heard the rival submissions and on perusal of the Record and Proceedings we are of the opinion that, the liberty to the appellants-accused needs to be protected till the disposal of the appeal. Throughout the trial the applicants were on bail and it is not reported that, they have misused the said liberty at any point of time.

5. According to the prosecution case, Jayshree Bhausaheb Tarkase was murdered at her house by the

present applicants along with her husband after dousing her with kerosene and setting her ablaze by means of burning matchstick. This incident has happened on 07.11.2011. The first dying declaration of Sau. Jayshree came to be recorded on 07.11.2011 by the Police Head Constable at Exhibit 44. In that dying declaration, deceased Jayshree has attributed the role to each and every applicants apart from her husband in the murderous assault on her. Thereafter, her second dying declaration came to be recorded on 08.11.2011 at Exhibit 78 by the Naib Tahsildar. In that dying declaration, deceased Jayshree has added one more person viz, Gopinath as her assailant apart from the present applicants and her husband. In this 2nd dying declaration she did not attribute any specific role to the applicants or her husband. The cause for incinerating deceased is stated to be that, applicants used to put pressure on her to sell her plot and to deliver the consideration to the present applicants for marrying their daughter.

6. It is settled that, when it is case of multiple dying declarations, those should be consistent in material

particulars. In the case in hand, prima facie, we observed that, both the officially recorded dying declarations of Jayshree are not consistent, in as much as, in her second dying declaration, she added one more person in the incident in question. That apart, even the first dying declaration of deceased Jayshree shows that, she was residing with her husband and son named Sumit. The prosecution has not chosen to examine this Sumit though he was eye witness to the incident in question. It is true that, the trial Court has examined Sumit as Court witness. The said Sumit came up with version that, his mother set herself ablaze.

7. The defence has examined Shantabai Chhaburao Salve as defence witness. She is neighbour of the deceased. Her evidence shows that, after hearing shout, she rushed to the house of deceased and saw deceased engulfed in fire and accused husband Bhausahab extinguished the fire by putting quilt on her person. Record shows that, accused-husband Bhausahab sustained burn injuries in that process. This defence witness is not stating about presence of applicants/accused on the spot of

incident.

8. Considering this nature of the evidence, we are of the considered opinion that, the applicants deserve to be released on bail by suspending sentence. Hence following order :-

ORDER

(i) The application is allowed. Substantive sentence imposed upon the applicants/accused, vide impugned judgment and order dated 6th May, 2015 passed by the learned Additional Sessions Judge-3, Aurangabad in Sessions Case No. 26/2012 is hereby suspended during pendency of the appeal.

(ii) The applicants/accused be released on bail on their executing P.R. bond of Rs. 5,000/- each and on furnishing surety of like amount by each of them.

9. The Criminal Application is disposed of in the above terms.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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