

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3316 OF 2015

IN

CRIMINAL APPEAL ST. NO.474 OF 2015

Balaji s/o Ganpati Waghmare,
Age-46 years, Occu:Labour,
R/o-Dighol (E), Tq-Sonpeth,
Dist-Parbhani

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Sonpeth,
Tq-Sonpeth, Dist-Parbhani.

...RESPONDENT

...

Mr. P.N. Kalani Advocate for Applicant.
Mr. S.B. Yawalkar, A.P.P. for Respondent.

...

**CORAM: A.V. NIRGUDE AND
V.K. JADHAV, JJ.**

DATE : 26TH OCTOBER, 2015

ORDER :

1. The Applicant's/Appellant's Appeal has been admitted. Applicant/Appellant is now seeking bail pending disposal of the Appeal. The Applicant

was not given bail while he was under trial. The learned Judge of the trial Court believed dying declaration recorded by prosecution witness No.5. This Constable, on learning that the victim had been admitted to civil hospital in burnt condition, rushed to the hospital, took opinion of the treating doctor that the victim was able to make a statement and thereafter recorded her statement in which she clearly stated that it was the Appellant who poured kerosene on her person and set her on fire. The postmortem report shows that the victim suffered 96% burns and died on the very next date.

2. The incident in question occurred on 18th September 2013 at about 7.00 a.m. and the dying declaration was recorded on the same day at 11.00 a.m. On the basis of dying declaration, offence was registered. Along with Appellant, there were three more accused who faced trial but were acquitted.

3. The question before us is, whether the Appellant deserves bail. Our answer is in affirmative. The only evidence against the Applicant/Appellant is the dying declaration. No corroborating circumstance was brought on record. In view of this, we are inclined to hold that at least on the face of it, the dying declaration is a weaker piece of evidence and we are inclined to release the Applicant on bail.

4. The Criminal Application is allowed. The Applicant - Balaji s/o Ganpati Waghmare shall be released on bail on his furnishing Personal Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount. The Applicant shall furnish bail before the trial Court.

[V.K. JADHAV, J.]

asb/OCT15

[A.V. NIRGUDE, J.]