

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

CRIMINAL APPLICATION NO. 6103 OF 2015

Kisan s/o Mhatarba Aghav,
Age : 51 years, Occu. Agriculture,
R/o. Village Hanumantwadi Chinchale,
Tq. Rahuri, Dist. Ahmednagar. ... Applicant

VERSUS

The State of Maharashtra. ... Respondent

.....
Mr R. S. Deshmukh, Advocate for the applicant
Mr V. H. Dighe, APP for respondent/State
.....

CORAM : **INDIRA K. JAIN, J.**
DATE : **5TH DECEMBER, 2015.**

PER COURT:

. Here is an application for regular bail in Crime No. I-247 of 2015 registered at Rahuri Police Station, Dist. Ahmednagar for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Heard Mr R. S. Deshmukh, learned counsel for applicant and Mr V. H. Dighe, learned APP for respondent/State. Perused case papers.

3. It appears from FIR that deceased Hirabai Aghav was married to Baburao before 20 years of the incident. The couple was blessed with two sons. She was an illiterate lady. It is alleged that Baburao killed his elder son by setting him on fire. Hirabai was subjected to ill-treatment at the hands of her husband. She was insisting her husband to transfer the land in the name of their son but husband was intending to sell out the land. On that quarrel used to take place between husband and wife.

4. Incident occurred on 28th June, 2015 at 2:00 pm. That time Applicant Kisan and Baburao brother of present applicant were in the field. They were discussing about disposing of the land. Hirabai reached there. Sindhu is wife of applicant Kisan. She also arrived. It is alleged that Baburao, Kisan and his wife assaulted Hirabai. Baburao poured kerosene on her person. Sindhu ignited match stick and set her on fire. That time applicant was standing. He uttered let her die. Then they fled away from the spot. Hirabai raised alarm. Her husband came back and extinguished fire. She was taken to Hospital. She sustained 38% burn injuries and succumbed to those injuries on 19th August, 2015.

5. After Hirabai was admitted to hospital statement of victim came to be recorded by Special Judicial Magistrate. On the basis of her statement initially offence under Section 307 of the Indian Penal Code was registered. On her death it was converted to Section 302 of the Indian Penal Code.

6. Learned counsel for applicant submits that charge-sheet has been filed. Applicant is in custody since 29.06.2015. He is having a school going son. No role is attributed to him in setting Hirabai on fire. He had not poured kerosene. He had not ignited match stick and considering his role learned counsel prays that applicant be released on bail.

7. Learned APP strongly resisted the application. It is submitted that in the dying-declaration Hirabai had implicated the applicant. She attributed specific role to applicant. After she was set on fire applicant uttered let her die and then he ran away from the spot. Learned APP submits that the conduct of applicant shows his *prima facie* involvement and urges to reject the application.

8. It can be seen from dying-declaration that there was a matrimonial dispute between husband and wife. Marriage took place before 20 years of the incident. Hirabai was insisting her husband to transfer land in the name of their son but her husband was bent upon to dispose of the land. No role is attributed to applicant regarding ill-treatment disclosed in dying-declaration.

9. The only role attributed to applicant is that at the time of occurrence both the brothers were discussing about disposing of land, they assaulted her and thereafter when her husband poured kerosene and Sindhu set her on fire Applicant was standing, he uttered let her die and then fled away.

10. In view of the role attributed to applicant his direct involvement in commission of murder is doubtful. This Court is thus inclined to allow the application. Hence the following order.

ORDER

- (i) Criminal Application No. 6103 of 2015 is allowed.

- (ii) Applicant Kisan s/o Mhatarba Aghav is released on bail in Crime No. I-247 of 2015 registered at Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Section 302 read with 34 of the Indian Penal Code on his furnishing PR and SB of Rs. 25,000/- each.
- (iii) He shall not tamper with the prosecution evidence and shall make himself available as and when required by the Investigating Agency.

[INDIRA K. JAIN]
JUDGE

sgp