

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.44 OF 2015

Mrs. Shankuntala Anand Patole Applicant
Vs.
The State of Maharashtra Respondent

Mr. Silvin Yohanan Kale for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent-
State.

CORAM: P.D. KODE, J.

DATED: JANUARY 12, 2015

P.C:

1. By this application accused No.1 in charge-sheet submitted by MHB Police Station, Mumbai against the applicant for herself along with her daughter – charge-sheeted accused No.2 for in furtherance of their common intention having committed murder of one Haffu alias Vanita Vishal Patole – daughter-in-law of the applicant – has prayed for bail. The said

police station has charge-sheeted the applicant and the co-accused accordingly, as a result of investigation of Crime No.87 of 2014, registered with said police station upon FIR-cum-dying declaration recorded by police after the victim sustaining 80% burn injuries was admitted in Babasaheb Ambedkar Hospital (Shatabdi Hospital) at Kandivali, Mumbai. Without detailing matters from said FIR, it can be said that in said report the first informant has given a detail account of the events which have occurred on said date which ultimately ended with accused No.1 setting her on fire after the victim herself had poured kerosene on her person from a stove.

2. Perusal of the charge-sheet also reveals another dying declaration recorded by Tahsildar, more so and in consonance with the matters stated in the FIR. The charge-sheet

amongst other also contain statement of two witnesses, namely, Rukhsana Mohsin Shaikh and Zarina Umer Shaikh, who are sisters of the victim and also residing in neighbourhood.

3. Learned APP by laying finger upon matters contained in the dying declaration to the effect of the applicant having set the deceased on fire and the material contained in the statements of above referred both witnesses that after the victim had caught fire, the applicant and the other charge-sheeted accused having not made any attempt to extinguish the fire but having rushed to said witnesses for informing about the incident submitted that it reveals that the applicant was entertaining an intention to commit the murder of her daughter-in-law. It is, thus, submitted that prayer for bail be negatived.

4. On the contrary, Mr. Silvin Yohanan Kale, learned counsel for the applicant has pressed the prayer for bail by meticulously taking through the account of the incident as contained in the FIR and dying declaration and submitting that considering the sequel of events which had occurred on that day clearly reveal that the victim had provoked the applicant and/or challenged her regarding earlier threats given by her of burning her. It is submitted that said account reveals that a quarrel had ensued in between the victim and the applicant. It is urged that said account reveals that initially during the quarrel the applicant had threatened the victim by lifting a stove that she will burn her by pouring kerosene. It reveals that after the deceased having asked her to do so, the applicant had kept back the stove. It reveals that thereafter the deceased was enraged and told applicant

that she would herself pour kerosene from the stove on her body and accordingly did so. It reveals that the victim in such a condition was sitting in the mori (bathroom) for about five minutes and the applicant was abusing her. It reveals that thereafter the victim challenged the applicant, whether she would burn her and thereafter, provoked, the applicant taken match-box and set her on fire.

5. The learned counsel contended that considering said sequel of events, it is clear that the incident was outcome of the quarrel in which both the parties had lost control and on being provoked, the applicant had set her daughter-in-law on fire in a fit of rage. It is contended that the incident had occurred after about 14-years of marriage of the victim with the son of the applicant.

6. The learned counsel, thus, contended that taking an overall view of the events which have occurred on said day, the offence occurred at the hands of the applicant would not transcend beyond offence under Section 304 of the IPC, due to same being covered either by exception (i) or exception (iv) of Section 300 of the IPC. It is submitted that considering the age of the applicant and the passage of time for which she was living with the deceased, the prayer for bail be leniently considered as no useful purpose would be served by keeping her in jail. It is submitted that the co-accused has already been released on bail.

7. After giving anxious consideration to the submissions advanced by both the sides, there appears substance in the submissions canvassed by the learned counsel for the

applicant regarding the matters contained in said declaration. After considering said matters, apparently it appears that it would be highly debatable that even in the event of prosecution establishing said allegations, the offence occurred at the hands of the applicant would fall within four corners of Section 300 of the IPC.

8. Now considering the submissions canvassed by the learned APP regarding the applicant and the co-accused having rushed to said witnesses and having not made any attempt to save the life of the deceased, apparently it appears that both of them were perplexed by the situation that instead of taking steps for extinguishing the fire, they had rushed to the neighbours. Though it is true that they had not taken such steps, still their act of rushing to said two witnesses is indicative of the fact

that they were not interested in hiding the act occurred at their hands. As a matter of fact, said circumstances pointed out by the learned APP apparently appears to be in favour of the applicant.

9. Having regard to it and the incident having occurred after about 14-years of marriage of the victim with the son of the applicant and the age of the applicant, discretion deserves to be exercised in favour of grant of bail.

10. Resultantly, the application is allowed. The applicant is directed to be released on bail in above said crime number on furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with one or more sureties to make up like amount and subject to conditions that after her release

the applicant shall (i) stay at the address mentioned in the application and shall not change the same without permission of the Court; (ii) attend the I.O. when summoned; (iii) not indulge in activity of tampering, threatening, coercing, intimidating or pressurizing the prosecution witnesses in any manner; and (iv) not misuse the bail granted vide this order for fleeing away or for committing any further offence.

11. The application accordingly stands disposed of.

(P.D. KODE, J.)