

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 161 OF 2015**

Shivram Dayaram Nishad & Anr.	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Rameshwar Navanath Gite for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 12TH MARCH, 2015

P.C. :

1. Leave to amend the cause-title of the application. Amendment be carried out forthwith.

2. Heard learned Counsel for the applicant and the learned A.P.P.

3. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-79 of 2014 registered with the Bhayander Police Station, Thane, for the alleged offences punishable under Sections 307, 376, 323 and 406 of the Indian Penal Code.

4. The applicant No. 1 is the husband of the complainant and applicant No.2 is the brother-in-law. The applicant No. 1 was married to the complainant on 16th May, 2013 and the incident is alleged to have taken place on 23rd September,2013. In the incident that took place on 23rd September,2013, the complainant had sustained 40% burns. Soon after the incident, the complainant was admitted to a private hospital, where she has given history of sustaining burn injuries due to blast of stove. The complainant's statement was recorded on 26th September,2013 by PSI, wherein, she has disclosed that the incident took place on 24th September,2013 when she was making tea on the stove, and as a result of a stove blast, she sustained burn injuries. She has stated in the said statement that her husband was in the bathroom and on hearing her cries, he came and immediately poured water on her person and tried to extinguish the fire and thereafter, took her for treatment to a private hospital. From there, he took her to the Life Line Hospital. However, as proper treatment was not available in the Life Line Hospital, she was brought to Nair Hospital. Thereafter, the complainant went to her maiden house and for the first time on 31st December, 2013, she has alleged the aforesaid offences as against

the applicant and others including her juvenile sister-in-law aged 13 years at the relevant time. The said complaint was made at Uttar Pradesh and subsequently registered as an FIR only in April, 2014.

5. Learned Counsel for the applicant contended that from a perusal of the statement of the complainant, which was given by her on her own accord in the hospital and before the PSI, it is evident that the complainant had sustained accidental burn injuries and that the applicant No.1 had extinguished the fire. He submitted that only subsequently, a false complaint was registered by the complainant as against the applicant and his entire family including the applicant No. 2, aged 19 and juvenile co-accused aged 13 years at the relevant time.

6. Perused the charge-sheet, the statements, the medical certificates and all the relevant documents. From the statements of the neighbours, it is clearly evident that at the relevant time, the applicant No.1 was alone present in the house and that the applicant No. 1 had extinguished the fire. It is also evident from the statements that the complainant had disclosed to the witnesses that she had accidentally

sustained burn injuries due to the blast of the stove and that the applicant No.1 had extinguished the fire. The statements of the witnesses also reveal that apart from the applicant No.1, none of the other co-accused were present at the spot. In fact, the statement of the School Authorities shows that the juvenile accused aged 13 years i.e. the sister-in-law of the complainant was present at the school at the time of the alleged incident. However, despite the said material on record, the police have callously, without applying their mind, produced the juvenile accused before the Juvenile Court and have initiated the proceedings against the juvenile accused, by filing a charge-sheet against her, only on the basis of the complainant's statements, ignoring the over-whelming material on record, which is to the contrary. In cases like this, police must examine the material before filing the charge-sheet, more particularly, where the entire family is implicated, including a juvenile girl i.e. sister-in-law of 13 years, and applicant No. 2 i.e. brother-on-law, who is 19 years of age. The impact of a prosecution and arrest can never be compensated, and the indelible life long scars can never be erased. This is the 2nd case, that I have come across where a juvenile was involved in a 498-A case. In that case, the boy who was the brother-in-law of the complainant, was chided by his teacher

for the registration of the offence, resulting in him losing one academic year. The boy was to appear for Standard 10th exam, but could not. The Apex Court in **Arnesh Kumar v. State of Bihar & Anr.**¹ has observed, that due to rampant misuse of Section 498-A and Dowry Prohibition Act, it would be prudent and wise for a Police Officer, not to arrest without reasonable satisfaction, which is reached after some investigation. Unfortunately, despite overwhelming material to the contrary, to show that some of the co-accused were not even present, charge-sheet has been filed against all.

7. The learned A.P.P when questioned about the conduct of the Investigating Officer with regard to filing of charge-sheet against all accused, in the light of the material that had come on record, in particular, the statements of the witnesses, states that the concerned Investigating Officer PSI Deepti Mithari, has been suspended although in connection with another case. In fact, the charge-sheet clearly shows that except the applicant, none of the co-accused were present at the spot. The PSI who filed the charge-sheet, in fact, also should have applied his mind and ought

1 2014(8) SCC 273

to have accordingly taken steps in accordance with law, considering the material that had come on record *qua* the accused.

8. Considering the manner in which this case has been handled, in light of the evidence that has come on record, it would be appropriate that the Superintendent of Police, Thane (Rural) looks into this matter, to ensure not only fairness and impartiality in conducting investigation, but also taking the cases to its logical end, in cases like this, in future.

9. Prima facie, considering the material on record, the applicants deserve to be enlarged on bail on the following terms and conditions:

ORDER

(i) The applicants be released on bail in connection with C.R. No. I-79 of 2014 registered with the Bhayander Police Station, Thane, on executing PR Bond in the sum of Rs. 15,000/- each with one or two sureties in the like amount;

(ii) The applicants to cooperate with the conduct of the trial.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.