

RMA

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRI. BAIL APPLICATION NO. 176 OF 2015
IN
CRI. APPEAL NO. 120 OF 2013**

Sitaram Dada Sarode

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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Appearances:-

<i>Mr. Sitaram Dada Sarode</i>	<i>Applicant-in-Person present.</i>
<i>Smt. V.R. Bhonsale</i>	<i>APP for the State</i>
<i>Mr. Satyavrat Joshi</i>	<i>Advocate for Applicant in Cri. Appln 165/15</i>

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**CORAM : SMT. V.K. TAHILRAMANI &
SMT. I. K. JAIN, JJ**

Reserved on : FEBRUARY 16, 2015.

Pronounced on : MARCH 2, 2015.

ORAL ORDER [PER SMT. V.K. TAHILRAMANI, J.] :

1. Heard the applicant-in-person and the learned APP for the State.

2. The applicant has been convicted and sentenced for the offence punishable under Sections 302 and 498-A of IPC

for treating his wife Sangita with cruelty and for causing her death by pouring acid on her. Being aggrieved by the said Judgment & Order, the applicant preferred Criminal Appeal No. 120 of 2013. The applicant is now seeking bail. Prior to this application, the applicant had preferred Cri. Application No. 36 of 2013 wherein he had prayed for bail. The Division Bench of this Court (Coram : P.V. Hardas & A.R. Joshi, JJ.) by detail order dated 2.4.2013 rejected the said application for bail. Thereafter the present application for bail was placed before the Bench presided over by Justice P.V. Hardas, however, on account of the order dated 12.2.2015 passed in this application, the matter is placed before us.

3. At the outset, it may be stated that no change in circumstances has been pointed out by the applicant since the date when his earlier application for bail was rejected.

4. The applicant has stated that there is only one eye witness in the present case i.e PW 8 Shantanu who is his son

as well as the son of deceased Sangita who was the wife of the appellant. The applicant has stated that there is delay in recording the statement of Shantanu and as such possibility of child witness being tutored can not be ruled out. In Criminal Application No. 36 of 2013 also, this ground was raised and it has been considered by this Court and thereafter, the bail application of the applicant came to be rejected.

5. In the present case, the conviction is based on the evidence of PW 8 Shantanu who is the son of the appellant and the deceased. Shantanu is an eye witness to the incident. The conviction is also based on the oral dying declaration made to PW 3 Shantabai Revji Masal and two dying declarations Exh. 77 and Exh. 42. Dying declaration Exh. 77 was recorded by PW 7 Dr. Kamble and dying declaration Exh. 42 was recorded by PW 2 Police Head Constable Kalidas. In both the dying declarations, Sangita stated that her husband suspected her character, hence, he

poured some substance like acid on her person and injured her. Nothing has been elicited in cross-examination of PW 7 Dr. Kamble and PW 2 Police Head Constable Kalidas so as to raise any doubt about their testimony.

6. Thereafter, the applicant submitted that the dying declaration Exh. 77 which is reflected in the medical case papers of Surya Hospital does not pertain to his wife but it pertains to some other patient, hence, this dying declaration cannot be relied upon. We have perused the case papers. They relate to Sangita Revaji Masal. It is not disputed that the name of the wife of the applicant is Sangita and it is also not disputed that the father of Sangita was Revji Masal. That the father of Sangita is Revaji Masal is also clear from the evidence of PW 3 Shantabai who is the mother of deceased Sangita. The full name of Shantabai is Shantabai Revji Masal. Thus, it is seen that the case papers were prepared in maiden name of the wife of the applicant. In such case, it cannot be said that the dying declaration Exh.

77 and the case papers pertain to some other patient and the papers do not pertain to the wife of the applicant.

7. Lastly it was argued by the applicant that a plastic bottle was seized from the spot and it is not possible that he could have poured acid from the said plastic bottle because it not possible that concentrated acid can be kept in a plastic bottle. He pointed out that the C.A. report also does not show that the bottle contained acid. He submitted that this shows that the entire case is false and hence, he may be granted bail. No doubt the plastic bottle did not contain acid but it is pertinent to note that no witness including the eye witness has stated that in this very bottle, the acid was kept and from this very bottle, the applicant poured acid on his wife Sangita and caused her death. Thus, we find no merit in this submission.

8. The other aspects argued by the applicant have already been considered when his earlier application for bail i.e Cri.

Application No. 36 of 2013 came to be rejected.

9. As stated earlier, the conviction is based on the evidence of eye witness PW 8 Shantanu, oral dying declaration made to PW 3 Shantabai Revji Masal and two dying declarations Exh. 42 and 77. Looking to all these facts, we do not think this is a fit case to grant bail. Application for bail is rejected.

[SMT. I. K. JAIN, J]

[SMT. V.K. TAHILRAMANI, J]

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