

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

CRIMINAL BAIL APPLICATION NO. 1481 OF 2015

Shiraj Rashid Pathan .. Applicant

v/s.

The State of Maharashtra ..Respondent/s

Mr. K.S.Patil i/b. Mr. Prashant Hagare for the Applicant
Mrs. R.V.Newton, for the Respondent

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 18, 2015**

P.C. :

1. This is an application for bail filed by the aforesaid applicant who is facing trial in Sessions Case No.59 of 2015 for offence under Section 302, 408A of Indian Penal Code.

2. Shri Patil, learned Counsel for the applicant submits that the FIR was lodged four days after the incident. He has further submitted that the dying declaration recorded immediately after the incident, exonerates the applicant. He has stated that the statement of the neighbour also does not

show the presence of the applicant at the place of incident. He therefore claims that the applicant is entitled for bail.

3. The learned APP submits that the complainant is the eye witness to the incident. He has further stated that the material on record prima facie reveals that the applicant was of suspicious character and was harassing and assaulting the deceased. She has further submitted that the spot panchanama also corroborates the case of the prosecution.

4. I have perused the record and considered the submissions advanced by the learned counsel for the applicant as well as the learned APP for the State. The documents produced on record reveal that on 8.3.2015 the wife of the applicant had expired as a result of septicaemia due to burn injuries. Afsana Shaikh, the sister in law of the deceased had lodged the FIR alleging that on 4.3.2015 at about 6 p.m. there was a fight between the applicant and his wife and that she had tried to intervene and settle the dispute. She has further stated that on the same date again at about 9 p.m. the applicant and the deceased were once again fighting and she had gone to the house of the applicant, and that she had seen the applicant assaulting the deceased with

iron rod, kicks and blows. When she tried to intervene, the applicant pushed her and told her not to interfere with their family affairs. Thereafter he picked up one can containing kerosene and poured the kerosene on his wife Asma and set her on fire. She has stated that said Asma had tried to extinguish the fire by pouring water over her body. The complainant also poured water over her body and tried to extinguish the fire. Thereafter the complainant informed the brother of the deceased who came to the place of incident and took said Asma to the hospital. Said Asma expired on 8.3.2015 and thereupon the complainant lodged a complaint against the applicant for causing the death of his wife Asma.

5. The records reveal that a police constable recorded the statement of Asma on 5.3.2015, wherein she had stated that she has sustained injuries due to bursting of the stove. It is to be noted that the statements of Azar J. Shaikh, Yunus Mehboob and Iqbal Shaikh reveals that the applicant was present in the hospital and he had instructed the deceased not to lodge a complaint against him because his children were small. Furthermore, the scene of offence panchanama which was drawn on the same date does not show any sign of bursting of stove. It is also to be noted that prima facie

there is nothing to show that at the time of recording of the dying declaration the deceased was in a mentally fit condition. Under the circumstances, I am not inclined to disbelieve the statement of the complainant on the basis of the said dying declaration.

6. The evidence on record prima facie reveals that the applicant had set his wife on fire and had thereby caused her death. The offence is of serious nature . The trial of the case has not yet commenced. The release of the applicant at this stage can hamper the trial. Hence, in my considered view the applicant is not entitled for bail. Under the circumstances, and in view of the discussion supra, the application for bail is dismissed.

[ANUJA PRABHUDESSAI, J.]