

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

BAIL APPLICATION NO.2327 OF 2015

Ankush Ramnath Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Shirish Gupte i/b. Mr. Neelesh V. Kalantri for the
Applicant.

Ms R.V. Newton, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th DECEMBER, 2015.

P. C. :

This is an application for bail filed by the aforesaid Applicant, who is facing trial in Sessions Case No.1 of 2015, pending on the file of Additional Sessions Judge, Nashik. The said case arises from C.R. No.48 of 2015 registered with Peth Police Station, District-Nashik, for the offences punishable under section 302 of the IPC and under sections 3(2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution in brief is that on 10.9.2014 at 8.00 p.m. the Applicant herein had poured kerosene on Usha Shekhare

and set her ablaze. The FIR was lodged by Usha Shekhare. Pursuant to which the aforesaid crime was registered. Said Usha succumbed to the injuries on 13.9.2014, accordingly offence under section 302 came to be added. The Applicant was arrested on 14.9.2014. The Applicant had filed an application for bail before this Court, which was dismissed as withdrawn. Subsequently, the Applicant filed application before the Sessions Court, which came to be rejected on 3.11.2015. The Applicant has therefore invoked the jurisdiction of this Court under section 439 of the Code of Criminal Procedure.

3. Mr. Gupte, the learned senior counsel for the Applicant has submitted that the dying declaration, was allegedly recorded on 10.9.2014. However, the opinion of the medical officer regarding fitness of Usha was obtained on 11.9.2014, which creates a reasonable doubt about the veracity of the dying declaration. He submits that the said Usha had sustained 95% burn injuries and therefore, it is difficult to believe that she could give a detail narration as recorded in the FIR.

4. The learned counsel for the Applicant further submitted that the statements of the witnesses are mutually inconsistent and raise doubt about truthfulness of these witnesses and credibility of the prosecution case. Mr. Gupte, the learned senior counsel has further

submitted that the Applicant was arrested on 14.9.2014 and the nature of the allegations as well as the supporting evidence does not justify further incarceration.

5. Ms Newton, learned APP has vehemently opposed the application on the ground that the FIR prima facie reveals that the Applicant was involved in setting Usha on fire and thereby causing her death. She has further submitted that the statements of the witnesses also prima facie reveal the involvement of the Applicant in the said crime. She has further submitted that the clothes of the Applicant were attached under panchanama and the same were smelling of kerosene, which fact also prima facie proves that the Applicant was present at the place of the incident and that he was involved in committing the said crime, which is of serious nature.

6. I have perused the records and considered the submissions advanced by the learned senior counsel for the Applicant and the learned APP for the Respondent -State. The records prima facie reveal that said Usha Shekhare was admitted in Civil Hospital at Nashik with burn injuries. Her statement was recorded on 10.9.2014 wherein she had allegedly stated that the Applicant had poured kerosene on her body and set her on fire. The copy of the statement, which is placed

on record does not mention the name or designation of the person who had recorded the statement. Furthermore, even though the said statement was allegedly recorded on 10.9.2014 the endorsement as regards the medical condition and fitness of said Usha was made by the Medical Officer only on 11.9.2014. It is however, to be noted that the FIR was not registered on the basis of the said statement but the crime was registered based on the statement recorded on 11.9.2014, wherein the victim had alleged that the Applicant herein had poured kerosene on her and set her on fire. The said FIR was recorded by the police inspector and the same was read over and explained to the victim and was as per the say of the victim. The FIR also contains endorsement of the Medical Officer certifying that the patient i.e. said Usha is in a fit condition to give statement.

7. It is pertinent to note that prima facie there is no discrepancy in the material particulars stated in these two dying declarations as to doubt the truthfulness of the version. The FIR dated 11.9.2014 therefore, prima facie reveals that the Applicant was involved in setting Usha on fire.

8. The statement of one Kalibai, prima facie reveals that on 11.9.2014 at about 8.00 p.m, she had heard Usha and the Applicant

quarrelling with each other and thereafter she had seen the Applicant running away from the house with the child. The statement of this witness further indicates that she had heard the deceased shouting for help and that she alongwith her husband had gone to the place of the incident. She has further stated that they had seen the victim-Usha burning. They extinguished the flames and thereafter shifted Usha to the hospital.

9. The statements of Manik and Bharat also prima facie reveal that they had entered the house and seen Usha in flames and that they tried to extinguish the flames and shifted the victim to the hospital. The discrepancy pointed out by the learned senior counsel for the Applicant is only as regards the presence of the child in the house, which is not material at this stage.

10. The statement of the mother of the victim also prima facie reveals that she had visited her daughter in the hospital and she had told her that the Applicant herein had set her on fire. The said oral dying declaration is also in consonance with the statement made in the FIR. Furthermore, the clothes of the Applicant were attached under Panchanama and prima facie observations are that the same were

smelling of Kerosene.

11. The material on record therefore, prima facie indicates that the Applicant had quarrelled with the deceased and thereafter poured kerosene on her and set her on fire. Said Usha died due to burn injuries. The records therefore, prima facie indicate that the Applicant is involved in committing offence under section 302 of the IPC, which is of serious nature. Taking into consideration the gravity of the offence and the punishment contemplated, this is not a fit case to exercise the discretion vested under section 439 of the Criminal Procedure Code. Furthermore, the trial has not yet commenced. The witnesses are known to the Applicant. If the Applicant is released on bail there is possibility of the Applicant influencing the witnesses and thereby hampering the trial.

12. Thus, in given facts and circumstances, the Applicant is not entitled for bail. Hence, the application for bail is dismissed.

13. It is made clear that the above prima facie observations are not to be treated as expressions of any opinion on merits of the case.

(ANUJA PRABHUDESSAI, J.)