

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [BA] No.790 of 2014

(Fatemabi w/o Mohd. Zuber

vs.

The State of Maharashtra, through P.S.O. Balapur, District Akola)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 10, 2015.

Heard Mr. R.M. Daga with Mr. J.B. Gandhi, the
learned Counsel for the applicant.

The applicant is before this Court seeking her
enlargement on bail in connection with Crime No.136/2014,
registered at Balapur Police Station, District Akola for the
offences punishable under Sections 302, 304-B and 498-A read
with Section 34 of the Indian Penal Code.

The learned Counsel for the applicant submits that
the applicant is the sister-in-law of the victim namely Shahida
Bano. He further submits that the story reflected in the report
lodged at the instance of the father of the victim is, the marriage
between the victim-Shahida Bano and accused-Mohd. Zakeria
was solemnized on 18/05/2009. Mohd. Zakeria was running a
grocery shop. In one part of the house, the matrimonial
relations of the Shahida Bano, namely her husband-Mohd.

Zakeria, mother-in-law Kubrabi and father-in-law Gulam Jafar, were residing, whereas in the other part of the house i.e. a room, the brother of her husband Mohd. Jaber and his wife i.e. applicant Fatemabi were residing with two children. The report then states about the ill-treatment received by Shahida Bano from her husband on account of demand of dowry. The couple was blessed with a daughter sometime in the month of December, 2012. The ill-treatment then was added with the displeasure for birth of daughter child. The report then states of a alleged intimacy of the husband of the victim and the applicant. The complainant then states that he received the information of his daughter and the grand-daughter setting on fire. He made an attempt to call his son-in-law. The initial attempt failed. Subsequently, it was informed by the son-in-law that due to shot circuit, Shahida and Amina (grand-daughter of the complainant) received burn injuries. The parental relations of Shahida rushed to Balapur and found dead bodies of Shahida Amina. Abdul Sattar, the father of Shahida alleges that the matrimonial relations of Shahida set her on fire. The learned Counsel for the applicant submits that the husband of the victim himself lodged accidental death report on 11/07/2014 at Balapur Police Station in respect of death of his wife Shahida Bano and daughter Amina. He submits that the report was lodged at the early hours of the day i.e. at 03:15 on

11/07/2014. He submits that on the very day i.e. on 11/07/2014, the father of the victim lodged a report at about 10:10 in the night. He submits that assuming the report refers to the ill-treatment caused by the matrimonial relations to the Shahida Bano, the only allegation against the applicant is that the husband of the victim was carrying illicit relations with the applicant. He also submits that the applicant runs private tuition classes and teaches Arbi to the students in the locality. He submits that the allegations in the report lodged at the instance of Abdul Sattar itself are far-fetched and maligning the stature and status of the applicant. He further submits that insofar as the alleged act of death of Shahida Bano is concerned, there is absolutely no material against the applicant to show that any role was played by the applicant. He further submits that the applicant was arrested on 19/09/2014 and since then she is behind the bars. He submits that the required necessary material is collected by the investigating agency and there is no reason to keep the applicant behind the bars for the indefinite period.

Mr. P.V. Bhoyar, the learned A.P.P. and the learned Counsel Mr. S.P. Palshikar assisting the prosecution, vehemently oppose the application. It is the submission of learned A.P.P. that the victim was subjected to ill-treatment on account of the money for the grocery shop of the husband of the victim. The

learned A.P.P. submits that in the process of investigation, statements were recorded of various witnesses. He submits that in the statements of those witnesses, who rushed to the spot immediately on hearing the hue and cry, it reveals that the applicant and the mother-in-law of the victim Kubrabi were inside the room and the door was opened by them and on enquiry, evasive replies were given. The learned A.P.P. submits that one of the witnesses states that the applicant ran away from the spot when the people started gathering there. The learned A.P.P. submits that as the applicant was occupying the premises with her husband and as the door was opened when the people gathered on the spot by the mother-in-law and the applicant, there is material against the applicant of her involvement. The learned A.P.P. made available the statement for perusal.

On considering the material, the material against the applicant is of finding her on the spot and opening the door with mother-in-law. Even accepting that this is a material, the material is not sufficient enough to show any active role played by the applicant on the backdrop of the allegation that the victim was set on fire. The report lodged at the instance of the father of the victim only makes a general allegation against the applicant that the applicant along with the other matrimonial relations were ill-treating the victim and a specific allegation that the husband of the victim was carrying illicit relationship

with the applicant.

Now considering the material on record on which the learned A.P.P. placed heavy reliance would be at the most certain circumstances. These circumstances by itself cannot be a material to establish the commission of a serious act of setting the victim on fire by the applicant. The other material namely the apparels wore by the accused i.e. husband and mother-in-law of the victim, are already recovered and are subjected to examination by the Forensic Lab. The statements of the witnesses are recorded. It is not the case that the applicant is so influential that she would cause any hindrance in the process of trial. The applicant is a lady and mainly conducting household activities and taking private tuition classes, the chances of the applicant moving her normal place of residence and family are rare.

Considering this aspect, in my opinion, the learned Counsel for the applicant has made out a case. The apprehension of the State can be taken care of by imposing certain conditions.

In the result, the application is allowed. The applicant be released on bail on her furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two sureties in the like amount on the following conditions.

- i. The applicant to attend Balapur Police Station, District Akola on every second Sunday of the month from 09:00

a.m. to 12:00 noon and a maintain diary of her attendance duly countersigned by the Police Station Officer, till commencement of the trial.

- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicant to submit her residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency or in case of change.
- iv. In case the applicant is moving out of the area of Balapur Police Station, she shall take permission and inform the concerned Police Station about her visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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