

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 583 OF 2016

Yamunabai w/o Uttamrao Patekar,
Age: 65 years, Occu: Household,
R/o. Plot No. 60, Galli 12,
Jaibhawani Nagar, Aurangabad

...Applicant

versus

The State of Maharashtra
Through Police Station
Jinsi Aurangabad.

...Respondent

.....
Mr. N. S. Ghanekar, Advocate for applicant
Mr. S. P. Deshmukh, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 15th FEBRUARY, 2016

ORAL ORDER :

The applicant is seeking regular bail in Crime No 290/2015 registered with Jinsi Police Station, District Aurangabad for the offence punishable under Sections 302, 307, 498-A read with Section 34 of Indian Penal Code.

2. The prosecution story is that the applicant's son Subhash was married to deceased Sangita, who was blessed with two children. Since Subhash was addicted to liquor, he has demanded amount of Rs. 10 lakh so as to satisfy the debt. Upon refusal by Sangita to fulfill the said demand of Subhash, it is claimed

that Subhash has set her on fire after pouring kerosene. The prosecution claimed that after deceased Sangita was set on fire, she tried to run out of the house, she was stopped by present applicant, rather it is claimed by prosecution that the applicant has abetted in the commission of crime. In this background, while trying to set out grounds for release of the applicant on bail, Mr. Ghanekar, learned Counsel for the applicant would urge that the applicant, being a woman (mother in law of deceased Sangita), aged about 65 years, the proviso to Section 437 of Code of Criminal Procedure is attracted. According to him, further detention of the applicant is not necessary as the investigation in the matter is complete and charge sheet is already filed.

3. He would then urge that in the incident in question, the applicant has suffered burn injuries and has tried to place reliance upon the medical discharge summary of the applicant. Attempt on the part of applicant, as per Mr. Ghanekar, was to extinguish the fire of Sangita and according to him, efforts of the applicant to that effect could be inferred from the investigation. In support of his contention, he has relied upon the statement of witnesses namely Shahuraj Borde and Shaikh Kamloddin Shaikh Bablubhai, who have participated in extinguishing fire on the spot.

4. Learned Counsel for the applicant has invited my attention to the statement of children of deceased Sangita, who have stated that the applicant has thrown empty gunny bag on the deceased Sangita, which was perhaps with an intention to control the fire on Sangita's body.

5. Learned A.P.P. while trying to oppose the application would urge that there is dying declaration which speaks of involvement of applicant in the crime in question. Apart of from the contents of F.I.R., he has also invited my attention to the dying declaration recorded by Executive Magistrate on 14/09/2015, wherein it is mentioned that the applicant was instrumental in setting ablaze deceased Sangita.

6. He would then urge that the demand and illtreatment, so also intention of applicant to commit crime in question could be inferred from the statement of various witnesses to the charge sheet and relied upon the statements of minor Gorakh and Pratiksha recorded under Section 164 of Code of Criminal Procedure. According to him, there is *prima facie* case against the applicant and prays that application be rejected.

7. With the assistance, I have perused the dying

declarations and entire contents of the charge sheet. It is no doubt true that both the dying declarations, present applicant is named as an accused, however, in the first dying declaration, the role attributed to him is creating interference in the movements of deceased Sangita when she was set ablaze by main accused. So far as second dying declaration is concerned, the role attributed to the applicant is that along with her son, she has set Sangita ablaze.

8. If both the dying declarations are read together, it could be inferred that there is no specific attribution as against the applicant of setting deceased Sangita on fire. What is sought to be attributed to her is restricting movements after she tried to run out of house. The Court must take judicial note of the fact as regards burn injuries suffered by present applicant and particularly in the part of body to which burn injuries are suffered by the applicant.

9. Apart from above, the fact as regards efforts on the part of applicant of trying to extinguish fire could be established from the statement of Shaikh Kalimoddin and Shahuraj Borde. The statement of minors namely Gorakh and Pratiksha speak of throwing of empty gunny bag by present applicant on the body of deceased Sangita and trying to restrict her movements, which perhaps was with intention to extinguish the fire by stopping her movements. In my

opinion, the investigation as is carried out, doubt as regards *prima facie* involvement of the applicant in the crime in question is created.

10. In the back ground of above referred discussion and the fact that the applicant being a woman, having regard to the proviso to Section 437 of Code of Criminal Procedure, it will be appropriate, in my opinion to order the release of the applicant. Hence, the following order.

The applicant be released on bail, in connection with Crime No 290/2015 registered with Jinsi Police Station, District Aurangabad for the offence punishable under Sections 302, 307, 498-A read with Section 34 of Indian Penal Code, upon furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

11. The criminal application stands allowed in above terms.

[N.W. SAMBRE, J.]