

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

**CRIMINAL APPLICATION NO. 3011 OF 2016
IN
CRIMINAL APPEAL NO. 355 OF 2016**

1. Shahrukh Salim Pathan
Age: 20 years, occu: Labourer,
R/o Khadka Taluka Newasa,
District Ahmednagar.
 2. Amina Bee W/o Salim Pathan
Age: 42 years, occu: Household,
R/o : as above.
 3. Sameena Javed Shaikh,
Age: 23 years, occu: Household,
R/o Ashwi, Tq. Rahuri,
District Ahmednagar
- ...APPLICANTS

versus

1. The State of Maharashtra
Through API Nevasa, Tq. Nevasa,
Dist. Ahmednagar.
 2. Aqeel Gani Bhai Shaikh,
Age: 38 years, occu. : Labour,
R/o Wambhori, Tq. Rahuri,
Dist. Ahmednagar
- ...RESPONDENTS

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Mr. Patel Khizer, Advocate for Applicants/appellants
Mr. S.Y. Mahajan, Addl. PP for Respondent No. 1 -State
Mr. A.D. Ostwal, Advocate for Respondent 2

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**CORAM : S.S. SHINDE, AND
K.K. SONAWANE, JJ.**

DATED : 5th DECEMBER, 2016.

Order :-

1. Heard learned counsel for the parties.
2. Perused the notes of evidence, in particular, dying declarations of the deceased Parveen at Exhibits – 28 and 48.

3. Submissions of the learned counsel appearing for the applicants are that, there is improvement in second dying declaration, though in first dying declaration the deceased was not able to put her thumb impression, in second dying declaration, which was recorded after two days of the alleged incident, thumb impression of the deceased was obtained, therefore, it creates doubt about the correctness of the statement made by the deceased in both the dying declarations. It is submitted that though applicant No. 3 had raised specific defence before the trial court that she was not residing at Newasa at the relevant time, said defence has not been considered by the trial court. It is further submitted that both the dying declarations are not trustworthy. He further submits that during the course of trial the applicants-accused were on bail and they have not tampered with prosecution witnesses. There is no breach of any condition of bail, therefore, the applicants deserve to be released on bail during pendency of this appeal.

4. The learned APP with the assistance of learned counsel appearing on behalf of respondent No. 2, relying on the findings recorded by the trial court and dying declarations at Exhibits-28 and 48 as well the oral dying declaration submits that the prosecution has proved beyond reasonable doubt the involvement of the applicants by examining the Executive Magistrate and concerned Police Officer, who have recorded the dying declarations and the Medical Officer, who had endorsed the mental condition and consciousness of the declarant about giving statement to the authorities.

5. We have considered the submissions advanced by the learned counsel appearing for the applicants and learned APP appearing on behalf of the respondent - State. Upon careful perusal of dying declaration at Exhibit-28, so far as main incident is concerned, it appears that applicant No. 2 - mother in-law caught hold the deceased and applicant No. 3 - sister in-law - Sameena poured kerosene on the person of deceased Parveen and set her ablaze, whereas her husband i.e. applicant No. 1 abused her. In both the dying declarations it appears that, applicant No. 1 - husband of the deceased abused her, applicant No. 2 - mother in-law caught hold the deceased and then applicant No. 3 - Sameena poured kerosene on her person and set her ablaze.

6. Upon careful perusal of the contents of both the dying declarations, so far as main incident is concerned, versions in both the dying declarations are consistent. Apart from it, the trial court while recording finding has relied upon oral dying declaration given by the deceased to her father. The witnesses, Executive Magistrate, Police Officer, who have recorded dying declarations and the Medical Officer, who had endorsed the mental condition and consciousness of the declarant about giving statement have been examined by the prosecution. Their evidence also supports the prosecution case. Therefore, we are of the considered view that prayer of the applicants to release them on bail cannot be favourably considered. Hence, we do not wish to elaborate on the evidence at this stage since appeal of the applicants is pending.

7. In that view of the matter, the application for bail stands rejected.

8. The Registry of this Court shall send original Record and Proceedings to the Registry of the court of Sessions Judge, Newasa, District Ahmednagar. Upon receiving the original record and proceedings by the Registry of the court of Sessions Judge, Newasa, District Ahmednagar, the Registry of concerned Court shall prepare the paper-book and send it back along with original record and proceedings, as expeditiously as possible, and preferably within three months from receipt of the original record and proceedings.

10. Upon receiving the paper-book and original record and proceedings, liberty to mention for early hearing of the appeal.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S.S. SHINDE, J.]

MTK