

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

906 CRIMINAL APPLICATION NO. 4066 OF 2016

AKSHAY S/O ANKUSH SHIRSATH

VERSUS

THE STATE OF MAHARASHTRA

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Mr. P.D.Tawshikar, Advocate for Applicant.

Mr. A.S.Shinde, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 20th AUGUST, 2016

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PER COURT :

1. The applicant in Crime No. 131/2016 registered at Shrirampur City police station, Tq. Shrirampur, Dist. Ahmednagar for the offences punishable U/ss 302,307,452,506 read with 34 of the Indian Penal Code, by this application is praying for pre-arrest bail.

2. Heard learned counsel for the applicant as well as learned A.P.P. Learned A.P.P. opposed the application by contending that there is statement of Anjali, sister of deceased Kajal, which points out that the applicant incinerated

deceased Kajal Kailas Kumawat and caused her death.

3. Perused the papers of investigation made available by the learned A.P.P. The incident of sustaining burn by deceased Kajal took place on 28/03/2016 at her house which is occupied by her parents as well as brother and sister. From the F.I.R. it appears that Kajal was immediately taken to the civil hospital, Ahmednagar for medical treatment. Thereafter, she was shifted to the hospital of Dr. Kute at Shrirampur. It is at the hospital of Dr. Kute, the statement of victim Kajal came to be recorded. Said statement was treated as F.I.R. and consequent to the death of Kajal on 31/05/2016, the same is to be construed as dying declaration of deceased Kajal. The dying declaration of deceased Kajal dated 12/05/2016 is to the effect that in presence of her sister Anjali and brother Rahul, present applicant poured kerosene on her person and set her ablaze.

4. Kajal was initially admitted at the civil hospital, Ahmednagar immediately after the incident as seen from her dying declaration. It is a matter of common knowledge that in medico legal cases, Govt. hospital always inform admission of the victim to the police out-post which is generally situated nearby the civil hospital at district headquarter. Papers of investigation does not show whether such intimation was received by the police out-post situated at civil hospital, Ahmednagar and what was the nature of such information.

5. It appears that then Kajal was shifted to Sai

Multi hospital of Dr. Kute and her statement was recorded after about 1 ½ months, where she pointed finger of accusation to the present applicant.

6. Perusal of papers of investigation goes to show that relation of prosecuting party and that of family of the present applicant were not cordial. Papers of investigation do show that parents of the present applicant were insisting parents of deceased Kajal to marry Kajal with the present applicant.

7. On this back-drop, it appears that while the application for anticipatory bail of the present applicant was pending before the learned Sessions Judge at Shrirampur, the applicant has filed an application for directing the prosecution to call for bed head ticket of deceased Kajal maintained at Sakhar Kamgar hospital, Shrirampur, where she had taken medical treatment. Accordingly, said document was called. Photo copy of said bed head ticket is placed on record by the applicant. Perusal of said ticket shows that deceased Kajal was admitted in Sakhar Kamgar hospital, Shrirampur on 28/03/2016 at 8.00 p.m. and she was thereafter referred to civil hospital, Ahmednagar on 29/03/2016. This appears to be the first hospital, where deceased Kajal took treatment. Bed head ticket maintained by the said hospital points out history of pouring kerosene by Kajal on her person and thereafter sustaining burns. It appears that the Investigating Officer is deliberately not conducting proper investigation of the crime in question. Papers of investigation forwarded to

the learned A.P.P. does not show that the Investigating Officer has seized papers of medical treatment of Kajal. Even bed head ticket of Kajal maintained at Sakhar Kamgar hospital is not finding its place in the papers of investigation.

8. It is seen that though according to the prosecution case, Kajal was incinerated by the present applicant, there was no F.I.R. on the date of the incident or rather for the period of 1 ½ months from the date of incident. This fact assumes importance as the prosecuting party and accused party were not sharing cordial relations.

9. *Prima facie*, it appears that the present applicant is falsely implicated in the crime in question. Present applicant is a student. As such his liberty needs to be protected, and therefore, the following order.

(i) The application is allowed.

(ii) In the event of his arrest in Crime No. 131/2016 registered at Shrirampur City police station, Tq. Shrirampur, Dist. Ahmednagar for the offences punishable U/ss 302,307,452,506 read with 34 of the Indian Penal Code, applicant Akshay s/o Ankush Shirsath be released on bail on executing P.R. Bond of ₹ 5,000/- [Rupees Five Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons

acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4066.2016