

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

Criminal Application No. 4191 of 2016

District : Jalna

1. Laxman Pandurang Kakde,
Age : 65 years,
Occupation : Agriculture &
Labour.

2. Chaturabai w/o. Laxman Kakde,
Age : 60 years,
Occupation : Household.

Both are R/o. Loni,
Taluka : Partur,
District : Jalna.

.. Applicants.

versus

The State of Maharashtra,
Through Police Station,
Ashti, Taluka : Partur,
District : Jalna.

.. Respondent.

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Mr. S.J. Salunke, Advocate, for applicants.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 20TH AUGUST 2016

ORAL ORDER:

Applicants / accused in Crime No. 93/2015, for offences punishable under Sections 302, 498A, read with Section 34 of the Indian Penal Code, registered at Police Station, Ashti, District Jalna, by this application, are praying for releasing them on bail after filing of the charge-sheet.

2. Heard the learned Counsel for the applicant. He argued that oral as well as officially recorded dying declarations of Anita Garibdas Kakde are divergent on material particulars and, therefore, it cannot be said that there is prima facie material to connect both applicants for offence punishable under Section 302 of the IPC.

3. The learned Addl. Public Prosecutor opposed the application by contending that all dying declarations of deceased Anita Kakde are consistent in material particulars and, therefore, as the offence is punishable either death sentence or life imprisonment, bail cannot be granted to applicants.

4. Perused the charge-sheet. Anita Kakde (since deceased) was married to co-accused Garibdas prior to 20 - 22 years of the incident. The incident of sustaining burns to Anita happened on 19.10.2015 at her matrimonial home. She succumbed to burn injuries on 26.10.2015. According to the prosecution

case, both applicants, who are parents-in-law of Anita, along with co-accused incinerated Anita and committed her murder.

5. After sustaining burns, Anita was taken to Civil Hospital at Jalna. On the day of incident itself, her dying declaration came to be recorded by the Police official present at the hospital. Anita reported that by suspecting her character, her husband poured kerosene on her person and both applicants as well as her two sisters-in-law ignited her by means of burning matchstick.

6. Subsequently, on 21.10.2015, another dying declaration of Anita came to be recorded by the Executive Magistrate. At that time, she disclosed that her mother-in-law i.e. applicant no.2 Chaturabai suspected her character. She poured kerosene on her person and her husband set her ablaze by means of burning matchstick.

7. Then, there are oral dying declarations of deceased Anita made to her parental relatives and children. Parental relatives of Anita are disclosing that Anita declared them that with the help of her in-laws, her husband poured kerosene on her person and set her ablaze. Her children are stating that their deceased mother disclosed them that their father and grandparents burnt her.

8. Perusal of the charge-sheet prima facie shows that entire case of the prosecution against present applicants is based on dying declarations of deceased Anita. In case of plurality of dying declarations, dying declarations are required to be consistent in material particulars. There is no initial presumption that the dying declaration contains truth. The declarant cannot be subjected to the cross-examination and such declarations are not generally made in presence of accused persons. Therefore, the Court is expected to apply strictest scrutiny to such declarations. Viewed from this angle, it appears that in her second dying declaration recorded officially by the Executive Magistrate, deceased Anita has not attributed any role to her father-in-law. Rather she has not stated about presence of her father-in-law at the time of incident on the scene of occurrence.

9. Considering the nature of evidence available against applicant no.1 Laxman s/o. Pandurang Kakde - father-in-law of deceased Anita, his pre-trial detention is not warranted.

10. So far as applicant no.2 Chaturabai w/o. Laxman Kakde is concerned, dying declarations of deceased Anita are consistent so far as her part in the crime in question.

11. In that view of the matter, I pass following order :-

(a) The Application is partly allowed.

(b) The application of applicant no.2 Chaturabai w/o. Laxman Kakde is rejected.

(c) The application to the extent of applicant no.1 Laxman s/o. Pandurang Kakde is allowed and he is directed to be released on bail in the above crime, on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

(d) Applicant no.1 Laxman Kakde shall not directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(e) Applicant no.1 Laxman Kakde shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial.

(f) Applicant no.1 Laxman Kakde shall not repeat commission of similar type of offences in future.

12. The Application stands disposed of in the
aforesaid terms.

(A.M. BADAR)
JUDGE

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