

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

**CRIMINAL APPLICATION NO. 4828 OF 2016**

1. Vardhman s/o. Baburao Walunjkar .. Applicants  
Age. 55 years, Occ. Agri.,
2. Rekha w/o. Vinod Khedkar  
Age. 23 years, Occ. Agri.,  
R/o. Sangvi, Tq. Ashti, Dist. Beed.
3. Kamal w/o. Vardhman Walunjkar  
Age. 50 years, Occ. Agri.,
4. Datta s/o. Vardhman Walunjkar  
Age. 25 years, Occ. Agri.,
5. Kakasaheb s/o. Vardhman Walunjkar  
Age. 21 years, Occ. Agri.,  
Applicant Nos.1 & 3 to 5 are r/o. Jawalke,  
(Satwaiche), Tq. Jamkhed, Dist. Ahmednagar.

Versus

The State of Maharashtra .. Respondent

Mr.V.M. Humbe, Advocate for the applicants.  
Mr.A.S. Shinde, A.P.P. for the respondent/State.

**CORAM : A.M. BADAR,J.  
DATED : 04.10.2016**

**P.C. :-**

1. Applicants/accused in Crime No.152 of 2016  
registered with Ashti Police Station, Dist. Beed, for

offences punishable under sections 302, 504 read with 34 of the Indian Penal Code, by this application are seeking pre-arrest bail.

2. Heard learned Counsel for applicants/accused. He argued that though in the dying declaration, the incident allegedly took place at the house of applicant No.2-Rekha and deceased Chhaya, papers of investigation show that deceased Chhaya was found in burnt condition in the field. Learned Counsel further argued that there is no evidence to connect the applicants to the crime in question.

3. Learned A.P.P. as well as learned Counsel appearing for the informant opposed the application by contending that in the dying declaration recorded initially, role of applicant Vardhman and applicant Rekha is categorically mentioned, which is corroborated by the history given to the Medical Officer, apart from oral dying declaration to son of the deceased. Therefore, according to learned APP as well as learned Counsel for the informant, no case for pre-arrest bail is made out.

4. Perused the papers of investigation. Deceased Chhaya Venkat Khedkar is mother-in-law of applicant Rekha Khedkar. Applicant Vardhman and Kamal are parents of

applicant Rekha; whereas applicant Datta and Kakasaheb are brothers of applicant Rekha. According to prosecution case, daughter-in-law Rekha as well as her relatives incinerated mother-in-law of Rekha, namely, Chhaya Venkat Khedkar in her own house on 12.07.2016 and committed her murder.

5. The dying declaration of Chhaya came to be recorded at Shrideep Hospital on 12.07.2016. She reported that all applicants except Rekha came to her house and quarreled with her. The reason stated is insistence of applicant Vardhman not to ask his daughter Rekha to do work. With this the declarant stated that applicant Rekha - her own daughter-in-law poured kerosene on her person in her house at Savangi and father of applicant Rekha, namely, Vardhman set her ablaze by means of match stick. The incident, according to the dying declaration occurred inside the house. The declarant further stated that after the incident her relatives residing behind her house came and extinguished fire by putting quilt on her person. On the basis of this dying declaration, the crime in question is registered on 23.07.2016. Chhaya died because of burns on 13.07.2016.

6. It is well settled that the dying declaration is a sacrosanct piece of evidence as the person dying may

not lie. If truthfulness of dying declaration is beyond doubt, then it can be acted upon, but as the same is not made on oath and as same is many times made not in presence of accused persons, who do not have any opportunity to cross-examine the declarant, there is no initial presumption that dying declaration contains truth and nothing but truth. Because of these inherent lacunas or weaknesses, for relying on evidence in the form of dying declaration, the Court is required to apply strictest scrutiny and close circumspection, while acting upon the dying declaration.

7. In the case in hand, the dying declaration of deceased Chhaya is making clear that the incident of incinerating her took place at her house and after hearing her shouts, after sustaining burns by her, her neighbourers came in her house and extinguished fire by wrapping her in quilt. If, the veracity of this dying declaration is decided by comparing it with attending circumstances, then it reveals that the incident might not have happened inside the house of Chhaya, located at village Savangi. The sight was inspected by the police during the course of investigation. The spot panchanama shows that on inspection of the house of deceased Chhaya, no signs of radiating heat, blackening of wall due to sooth particles were found on the spot. It appears that

the instigators could not locate any witness who allegedly rushed to the spot after the incident and extinguished fire by wrapping Chhaya in the quilt at her house. No seizure of such quilt is seen in the papers of investigation. It is apparent from the papers of investigation that Chhaya was found in burnt condition in the field of Pandurang Khedkar. This is from the statement of witness including Balasaheb Khedkar. This evidence puts a question mark on genesis of the prosecution case. In such situation, with such evidence, I am of the considered opinion that custodial interrogation of the applicants is not at all warranted, though medical history and statement of son of the deceased is stating about participation of applicant Vardhman and applicant Rekha in the crime in question. In this view of the matter, following order :-

**O R D E R**

- i. The application is allowed.
- ii. In the event of their arrest in Crime No.152 of 2016, registered with Ashti Police Station, Dist. Beed, for the offences punishable under sections 302, 504 read with 34 of the Indian Penal Code applicant No.1 - Vardhman s/o. Baburao Walunjkar, applicant No.2 - Rekha w/o.

Vinod Khedkar, applicant No.3- Kamal Vardhman Walunjkar, applicant No.4-Datta s/o. Vardhman Walunjkar and applicant No.5-Kakasaheb s/o. Vardhman Walunjkar be released on bail on executing P.R. Bond of Rs.20,000/- (Rupees Twenty Thousand) and on furnishing surety in like amount each.

iii. As a condition of this order, the applicants 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 to the Court.

iv. The applicants shall not tamper the evidence of the prosecution.

v. The applicants shall attend concerned police station on 17th and 24th October, 2016 in between 11.00 a.m. to 01.00 p.m. and co-operate in the investigation.

**[A.M. BADAR, J.]**