

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

924 CRIMINAL APPLICATION NO. 4906 OF 2016

BASAMMA W/O SHANKAR SHERIKAR

VERSUS

THE STATE OF MAHARASHTRA

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Mr. A.A.Mukhedkar, Advocate for Applicant.

Mr. N.B.Patil, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 16th SEPTEMBER, 2016

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PER COURT :

1. The applicant, who is mother-in-law of the deceased Ambika Siddheshwar Sherikar in Crime No. 134/2015 registered at Murum police station, Murum, Tq. Murum, Dist. Osmanabad for the offences punishable u/ss 302,498 (A),323,504, read with 34 of the Indian Penal Code, by this application is praying for releasing her on bail.

2. Heard the learned counsel for the applicant. He argued that subsequent dying declarations indicating

homicidal death are tutored dying declarations. The learned counsel submits that, therefore, after filing of the charge sheet further pre-trial detention of the applicant is not warranted.

3. The learned A.P.P., relying on the Order of the trial Court, argued that the smell of kerosene was very much there on the spot and, therefore, the circumstances indicate that the homicidal death of Ambika was caused by her mother-in-law i.e. the present applicant.

4. Perused the papers of investigation including the F.I.R. of the crime in question. Ambika Siddheshwar Sherikar [since deceased] was residing with her husband, children and in-laws at Rajiv Gandhi Nagar, Gulbarga. Ambika sustained burns on 03/12/2015 and she died because of burn injuries on 10/12/2015 at Civil hospital, Solapur. The incident of sustaining burns took place at the matrimonial house of deceased Ambika.

5. According to the prosecution case, deceased Ambika was subjected to cruelty by her in-laws and husband. The prosecution further alleged that in the morning hours on 03/12/2015, the applicant Basamma, who is the mother-in-law of deceased Ambika, poured kerosene on the person of Ambika and set her ablaze by igniting match stick. This, according to the prosecution case, has resulted in homicidal death of Ambika.

6. The F.I.R. of the crime in question came to be registered on 11/12/2015 at the instance of Viresh Sharanbasappa Yelwantagi, who is brother of deceased Ambika. His report reveals that at about 8.00 p.m. on 03/12/2015, his sister Ambika made oral dying declaration before him to the effect that the present applicant had set her ablaze by pouring kerosene on her person. The prosecution has not explained as to why despite knowing about this incident on 03/12/2015, informant Viresh had not lodged report with police. The F.I.R. does not contain any explanation for not lodging report despite knowing the facts as to how his sister sustained burns on 03/12/2015 itself.

7. After sustaining burns, Ambika was referred to the Civil hospital, Solapur on 03/12/2015 itself. At 8.30 p.m. on that day, her dying declaration came to be recorded by the Executive Magistrate after getting necessary certificate from the Medical Officer. Ambika reported sustaining burns accidentally while heating water on the hearth.

8. On 03/12/2015 itself, statement of Ambika came to be recorded by police Head Constable at Civil hospital, Solapur. Again deceased Ambika disclosed that she sustained burns accidentally while heating water on the hearth.

9. On 05/12/2015, Viresh [informant] made an application to the Police Station Officer of Sadar Bazar police station, Solapur stating that in-laws of Ambika had threatened her and because of fear of in-laws, Ambika had disclosed that

she sustained accidental burns. He then requested for recording fresh dying declaration of Ambika. Accordingly, on 05/12/2015 itself, the Executive Magistrate recorded 3rd dying declaration of Ambika, when she stated that the present applicant poured kerosene on her person and ignited her by match stick. Similar are dying declarations of Ambika allegedly made by her to her relatives.

10. Though dying declaration enjoins sacrosanct status as a piece of evidence, the same is not made on oath and maker thereof is not available for cross examination by the accused. Therefore, there is no initial presumption that the dying declaration contains nothing but the truth. Therefore, the Court is required to examine truthfulness of the dying declaration by taking into consideration the surrounding facts and circumstances. It is well settled that in case of plurality of dying declarations, they all should be consistent with each other in material particulars. For undertaking this exercise, the Court is required to apply the strictest scrutiny and close circumspection to the statements made by the deceased.

11. In the case in hand, initial version of the deceased was that of sustaining accidental burns. Thereafter, after a few days and that too after arrival of her parental relatives, the deceased came up with a version that her mother-in-law poured kerosene on her person and set her ablaze.

12. *Prima facie*, the possibility of tutoring the

deceased in the wake of written application by her brother to the police on 05/12/2015 can not be ruled out. As the scope for examination of dying declaration is limited arena, even at this stage, the Court can not ignore such significant aspect of the matter.

13. Considering this nature of evidence against the applicant after filing of the charge sheet, her further pre-trial detention is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) The applicant Basamma w/o Shankar Sherikar in Crime No. 134/2015 registered at Murum police station, Murum, Tq. Murum, Dist. Osmanabad for the offences punishable u/ss 302,498 (A),323,504, read with 34 of the Indian Penal Code be released on bail on executing P.R. Bond of ₹ 20,000/- [Rupees Twenty 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.

(v) The applicant shall co-operate the trial Court in expeditious disposal of the trial against her.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4906.2016