

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

920 CRIMINAL APPLICATION NO. 4910 OF 2016

NIJAM ALAM SAYYAD AND ANR.

VERSUS

THE STATE OF MAHARASHTRA

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Mr. K.S.Solanke h/f Mr. S.J.Salunke,
Advocate for Applicants.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 8th SEPTEMBER, 2016

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PER COURT :

1. The applicants/accused in Crime No. 3/2016 registered at Dindurd police station, Tq. Majalgaon, Dist. Beed for the offences punishable U/ss 302,147,149 of the Indian Penal Code, on the basis of the statement of Sk. Dastagar Sk. Maheboob, by this application are seeking pre-arrest bail.

2. Heard learned counsel for the applicants as well as learned A.P.P. Learned A.P.P. opposed the application by contending that statement of Pashabee, who is wife of the deceased, is corroborating the version of the deceased in the

dying declaration.

3. Perused Case Diary. The crime in question came to be registered on the basis of the statement of Sk. Dastagar Sk. Maheboob recorded by police on 10/02/2016 while taking treatment at the hospital. Ultimately, Sk. Dastagar Sk. Maheboob succumbed to the burn injuries and, therefore, his statement now becomes dying declaration.

4. Sk. Dastagar Sk. Maheboob [since deceased] informed police that at about 7.00 a.m. on 10/02/2106, he was with his grand children Sayil, Asma and Sonu. Sk. Dastagar Sk. Maheboob stated that in-fact he had been to the house of Syed Alam for calling his above grand children. It is further averred in the dying declaration that, at that time, present applicants and co-accused came there and all of them poured kerosene on his person and set him ablaze. Ultimately, Sk. Dastagar Sk. Maheboob succumbed to the burn injuries.

5. Prosecution case against the present applicants rest on dying declaration of Sk. Dastagar Sk. Maheboob. It is well settled that dying declaration is generally made by the declarant in absence of accused persons and accused persons are not having an opportunity to test its veracity by cross examining the declarant. As such, there is no initial presumption that the dying declaration contains truth. Therefore, the Court is always required to examine the surrounding circumstances in order to examine whether the dying declaration is truthful and reliable.

6. In the case in hand, deceased Sk. Dastagar Sk. Maheboob in his dying declaration has stated that he had been to the house of Syed Alam for calling his grand children including Asma. The statement of Asma recorded by the Investigating Officer shows a different theory. Her statement reveals that Sk. Dastagar Sk. Maheboob indulged in self-effacement. Since the sphere of the scrutiny of the dying declaration is very limited area, the Court can not side-line such important aspect. As the material collected by the Investigating Officer is showing 2 probabilities, benefit thereof certainly goes to the accused persons even while considering the matter for bail. Hence, the following order.

(i) The application is allowed.

(ii) In the event of their arrest in Crime No. 3/2016 registered at Dindurd police station, Tq. Majalgaon, Dist. Beed for the offences punishable U/ss 302,147,149 of the Indian Penal Code, applicant No. 1 Nijam Alam Sayyad and applicant No. 2 Bhaiyya @ Sajjad @ Sajed s/o Shamad Sayyed be released on bail on executing P.R. Bond of ₹ 30,000/- [Rupees Thirty Thousand] each and on furnishing surety in the like amount.

(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 or the Court.

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

(v) The applicants shall attend the concerned police station on every Sunday in between 11.00 a.m. and 1.00 p.m. till filing of the charge sheet and they should co-operate the Investigating Officer in the investigation of the crime in question.

[A.M.BADAR, J.]