

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

23 CRIMINAL APPLICATION NO. 4942 OF 2016

SARANG S/O MANIK GARAD

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.S.Rathi, Advocate for Applicant.

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

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CORAM : A.M.BADAR, J.

DATE : 14th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 23/2016 registered at Goregaon police station, Tq. Sengaoon, Dist. Hingoli for the offences punishable u/ss 302, 307, 498-A, 109 read with 34 of the Indian Penal Code, by this application is seeking his release on bail.

2. Heard learned counsel for the applicant. He argued that statements of neighbours of deceased Sharada, recorded soon after the incident, are not reflecting any illtreatment to Sharda. The learned counsel further argued that there was no motive with the applicant to commit murder of his wife Sharada. He further argued that as investigation is

over, considering the nature of evidence against the present applicant, the applicant is entitled to be released on bail.

3. The learned A.P.P. opposed the application by contending that even neighbour named Kantiram Banduji More is stating about the oral dying declaration of deceased Sharada. The learned A.P.P. submits that the dying declaration recorded by the Executive Magistrate shows complicity of the applicant in the crime in question.

4. Perused the charge sheet. It is seen that Sharda – wife of the applicant, sustained burns and she was admitted to the District hospital, Akola. Her dying declaration was recorded at that hospital by the Executive Magistrate after getting necessary certificate from the Medical Officer. In her dying declaration, Sharda has stated to the Executive Magistrate that when she was cooking food on the hearth, her husband came and poured kerosene from a can on her person. Sharda further stated that she sustained burns and her husband had incinerated her.

5. During investigation, the Investigating Officer has recorded spot panchanama on 17/02/2016. The spot panchanama also reflects presence of can of kerosene on the spot apart from half burnt match stick.

6. In her officially recorded dying declaration, deceased Sharada has categorically attributed role of incinerating her to her husband i.e. present applicant Sarang

Manik Garad. The dying declaration enjoins sacrosanct status as a piece of evidence as it comes from the mouth of a person who is about to die and at that stage, he or she is not likely to make a false statement. However, the Court is required to ascertain truthfulness of the dying declaration from the surrounding circumstances. From the case in hand, the spot panchanama corroborates the dying declaration. The statements of the parents and relatives of deceased Sharada, though belatedly recorded, show her oral dying declaration implicating the applicant in the crime in question.

7. In this view of the matter, no case for bail is made out. Hence, the following order.

(i) The application stands rejected.

8. Needless to state that the observations made above are prima facie in nature having no bearing on the trial against the present applicant.

[A.M.BADAR, J.]