

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

Criminal Application No. 5022 of 2016

District : Dhule

Nana s/o. Trambak Halor,
Age : 26 years,
Occupation : Education,
R/o. Village Hatti,
Taluka : Sakri,
District : Dhule.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

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Mr. C.R. Deshpande, Advocate, for the applicant.

*Mr. N.B. Patil, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 23RD SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 21/2016 registered with Police Station, Nizampur, District Dhule, for offences punishable under Sections 302, 307, 498A, 323, 504, 506, read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, by this application, is praying releasing him on bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that role attributed to the present applicant in the crime in question is only of abuses to the deceased. The learned Counsel further argued that no role is attributed to the present applicant in respect of actually causing burn injuries to deceased Ratnabai w/o. Santosh Masule. The learned Counsel further argued that rest of all accused persons have already been released on bail by the learned Addl. Sessions Judge and therefore, by following doctrine of parity, the present applicant should also be released on bail.

3. The learned Addl. Public Prosecutor opposed the application by submitting that the crime in question is serious and it is regarding murder of a married woman.

4. Perused the charge-sheet. The crime in question was registered on the basis of statement Ratnabai recorded at Shri Bhausaheb Hire Government Medical College at Dhule by the Police Officer on 17.04.2016. Ratnabai sustained burn injuries at her residential house. Her statement was recorded after getting her condition and fitness to give that statement certified by the treating Medical Officer. That statement was considered as the FIR and then the crime in question is registered. In her statement,

Ratnabai has disclosed that she was residing with her husband who is also accused in this case. She stated that rest of accused persons who are relatives of her husband, are residing just abutting her house. According to Ratnabai, she became pregnant and therefore stopped going for doing labour work to earn the livelihood. As she was not going to do labour work for earning livelihood, all accused persons including present applicant started harassing her. They started asking her to bring Rs. 3,00,000/- from her parents instead of sitting idle in the house for nine months. The declarant further disclosed that on 17.04.2016 at about 09.30 a.m., all accused persons started quarreling with her for the reason that she does not do any work for earning livelihood. The declarant further stated that then her mother-in-law, sisters-in-law and both nephews pulled her hair, abused her and assaulted her. Her brother-in-law also assaulted her. The declarant further stated that then her husband poured kerosene on her person and her father-in-law ignited her by means of a match-stick.

5. The applicant is one of the nephew of Ratnabai. In her statement, the informant has categorically named the applicant as one of the accused who was harassing her.

6. Subsequently another statement of Ratnabai

was recorded by the Executive Magistrate. In that statement, Ratnabai gave consistent version about the incident ascribing role to the present applicant who is her nephew. Ultimately Ratnabai succumbed to burn injuries sustained by her. As such her both statements became dying declaration as they pertain to the circumstances leading to her death. In her both statements, Ratnabai has categorically disclosed the circumstances in which her death took place. The cumulative effect of the entire incident needs to be considered rather than individual role ascribed to each accused person. Prima facie it is seen that all accused persons were acting with common intention. Common intention, being state of mind, has to be considered from the attending circumstances. In the case in hand, statements of Shanubai Suryawanshi, Jagan Suryawanshi, Parmeshwar Suryawanshi, etc. shows post event conduct of the present applicant. When the injured was being taken to the hospital by ambulance, the present applicant armed with a stick was not permitting the ambulance to proceed towards the hospital. The applicant was declaring that let the injured die there itself.

7. No doubt, the learned Addl. Sessions Judge by various orders released co-accused on bail in the crime in question. However, the learned Addl. Sessions Judge appears to be oblivious to the fact that the offence is punishable either with death or

life imprisonment. The prosecution has invoked Section 34 of the IPC and such invocation appears to be supported by consistent dying declarations as well as statements of witnesses. In this view of the matter, this Court is not bound to adopt the way which was adopted by the learned Addl. Sessions Judge while releasing other accused persons on bail in the crime in question.

8. Hence, no case for bail is made out. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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