

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

Criminal Application No. 5023 of 2016

District : Beed

Baban s/o. Ashruba Phalke,
Age : 43 years,
Occupation : Labour &
Agriculturist,
R/o. Phokarni Limba Ganesh,
Taluka & District : Beed. .. Applicant.

versus

The State of Maharashtra,
Through P.I., Police Station,
Neknur,
Taluka & District : Beed. .. Respondent.

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Mr. Narsinh L. Jadhav, Advocate, for the applicant.

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for the
respondent.*

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CORAM : A.M. BADAR, J.

DATE : 10TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 68/2016 registered with Police Station, Neknur, District Beed, for offences punishable under Sections 302, 307, 506, read with Section 34 of the Indian Penal Code, by this application, is seeking his release on

bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that though the deceased in her dying declaration has implicated the applicant in the crime in question, surrounding circumstances shows that the dying declaration is unbelievable. The learned Counsel drew my attention to statements of Dadasaheb Bhise, Sonabai Phalke, Govardhan Sangle and Ambarnath Mulik and argued that statements of all these witnesses are disclosing that the applicant is not involved in the crime in question. The learned Counsel also drew my attention to the spot Panchanama and submitted that burnt pieces of beadings were found on the spot of the incident. According to the learned Counsel for the applicant, the applicant was not present in the village at the time of the incident in question.

3. The learned Addl. Public Prosecutor opposed the application by contending that the crime in question is serious. Apart from two dying declarations, there are several witnesses who have disclosed oral dying declarations of Manisha w/o. Shahaji Phalke, implicating the applicant in the crime in question.

4. Perused the charge-sheet. According to the prosecution case, Manisha (since deceased) sustained

burns on 13.05.2016 in her matrimonial house. She died because of burn injuries while taking treatment at the District Hospital, Beed, on 19.05.2016. Undisputedly, the present applicant is her brother-in-law.

5. Charge-sheet reveals that after sustaining burns, Manisha was taken to the Government Hospital, Beed, where her first dying declaration came to be recorded by Police at about 11.00 a.m. of 13.05.2016 itself. In this dying declaration, Manisha averred that on 13.05.2016, she was sleeping inside her house with her daughters. She further stated that because of quarrel with her husband, her husband slept outside the house. As per version of Manisha, at about 04.00 a.m. of 13.05.2016, her husband Shahaji and his brother Baban (present applicant) came inside the house. Her husband poured kerosene on her person and the present applicant set her ablaze by means of a burning match-stick. Manisha further disclosed that she shouted loudly and therefore her neighbours rushed and extinguished fire from her person by pouring water.

6. Charge-sheet further shows that second dying declaration of Manisha was recorded officially by the Executive Magistrate at about 01.00 p.m. of 13.05.2016 itself. In that second dying declaration, Manisha has consistently stated that she slept inside

the house with her daughters. At about 04.00 a.m. in the morning, her husband Shahaji and the present applicant Baban came inside the house. Her husband poured kerosene on her person and the present applicant set her ablaze by means of a burning match-stick.

7. Apart from these two officially recorded dying declarations, Manisha is stated to have disclosed the incident to her parental relatives. Their statements are to the effect that husband of Manisha poured kerosene on her person and the present applicant set her ablaze.

8. The case of the prosecution is based on dying declarations of Manisha. Though dying declaration is considered to be sacrosanct piece of evidence, there is no initial presumption that the dying declaration contains the truth and nothing but the truth. Such statement of the declarant is not on oath. It is not made in presence of accused persons. Accused persons never gets an opportunity to cross examine the declarant and to test veracity of such statement on the touchstone of cross examination. Because of these inherent lacunae or weakness, no initial presumption can be drawn that the dying declaration contains truth. Therefore, while construing the evidence regarding dying declaration, Courts have to apply the strictest scrutiny and

closest circumspection to the statement of the declarant before being acted upon.

9. Now, let us examine whether there is prima facie material to show that statement of declarant Manisha is truthful and the same is not the product of her imagination.

10. According to dying declarations of Manisha, several residents of village Pokhari came after hearing her shouts and extinguished fire from her person. The investigator has recorded statement of those witnesses. They are Dadasaheb Bhise, Ambarnath Mulik, Govardhan Sangle, Mahadev Bhosle, etc. Statements of all these witnesses goes to show that when they heard shouts of Manisha, they rushed to the spot. They had seen her engulfed with fire outside her house at about 07.00 a.m. of 13.05.2016. While they were extinguishing fire from person of Manisha, her husband Shahaji came from outside along with the daughter after purchasing a packet of biscuits. Statements of these witnesses as such shows that her husband was not inside the house but he was out of the house apparently gone for purchasing packet of biscuits.

11. Sonabai is daughter of deceased Manisha. She is a child witness. The investigator has recorded her statement. Manisha claims to have slept

in the night with her daughter inside the house. On this backdrop, statement of Sonabai goes to show that in the morning, there was quarrel between her father and mother. Sonabai further stated that then her father went outside the house. Thereafter, as per version of Sonabai, Manisha sent all her daughters outside the house. Sonabai further stated that within short time, her mother engulfed in fire came outside the house and suffered fall outside the house. According Sonabai, thereafter she ran towards shop and informed the incident to his father Shahaji.

12. Statement of witnesses named above are further stating that the present applicant Baban was not on the spot at the time of the incident. They had stated that Baban had gone out of the village, a day earlier. Statements of witnesses from Pokhari village also shows that Baban was residing separately from his brother Shahaji and their houses were situated far away from each other.

13. First officially recorded dying declaration of Manisha further shows that she was demanding partition by insisting it from her parents-in-law.

14. The evidence collected by the investigator, as noted in foregoing paras, prima facie shows that dying declarations of Manisha may not be truthful. However, ultimately it is for the prosecution to

establish its truthfulness by leading evidence. However, with such evidence, the applicant cannot be asked to suffer further pre-trial detention. I see no reason to deny bail to the applicant in the light of evidence against him.

15. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant shall abide by the following directives :-

(i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against

him.

(iii) The applicant shall not repeat commission of similar type of offences in future.

(d) The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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