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

CRIMINAL APPLICATION NO. 5195 OF 2015

Uttam Rupchand Rathod

..APPLICANT

VERSUS

The State of Mah. & anr.

..RESPONDENTS

Mr A.M. Salok, Advocate for applicant;

Mr K.D. Munde, Addl. Public Prosecutor for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 8th January, 2016

ORDER :

By the present application under section 439 (2) of the Code of Criminal Procedure, the applicant is seeking cancellation of bail granted to respondent no.2 herein, by Additional Sessions Judge, Aurangabad, on 2nd September, 2015, in Bail Petition No.1261 of 2015, in relation to C.R. No.I-292 of 2015 registered with Mukundwadi police station, for offence punishable under section 302 of the Indian Penal Code.

2. The applicant's daughter Kavita was married to respondent no.2-accused and the prosecution story as narrated by deceased Kavita is that respondent no.2 has set her ablaze as he was under influence of liquor.

3. Learned Counsel appearing on behalf of the applicant, while trying to make out a case for cancellation of bail, would urge that respondent no.2 ought not to have been released on bail in view of availability of *prima facie* evidence against him. Learned Counsel would urge that the dying declaration recorded by the Executive Magistrate in an unequivocal terms name respondent no.2 as a culprit. According to him, just for the inaction or incompetency on the part of the Investigating Officer for not placing on

(2)

record the earlier dying declaration of the deceased Kavita, respondent no.2 ought not to have been released on bail, particularly when there was enough evidence available on record.

4. With the assistance, I have perused the case papers placed on record. *Prima facie*, respondent no.2 has also sustained burn injuries and the earlier dying declaration was not placed on record. As such, it appears that the inaction on the part of the Investigating Officer in not carrying out fair investigation, was formed to be the basis for granting regular bail to respondent no.2.

5. Respondent no.2 has not jumped the bail and the order of bail is justified in the above background.

6. In view of above, no interference is called for. Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

amj