

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

CRIMINAL APPLICATION NO.5139 OF 2016

1. Chandrakala Vasudeo Ware,
Age 55 years, Occu. Housewife,

2. Sukshala Limbaji Ware,
Age 80 years, Occu. Housewife

Both r/o Dhankanwadi (Wari Vasti),
Taluka Pathardi, Dist. Ahmednagar

..Applicants

Versus

. State of Maharashtra

..Respondent

Mr Joydeep Chatterji, Advocate for applicants
Mr A.S. Shinde, A.P.P. for respondent

CORAM : A.M. BADAR, J.

DATE : 20 September 2016

PER COURT

1. Applicants, who are accused in Crime No.I-350/2016/2015 for the offences punishable under Sections 302, 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code, registered at Pathardi Police Station, District Ahmednagar, by this application are seeking pre-arrest bail . Applicant No.1 is mother-in-law whereas applicant No.2 is grand mother-in-law of Sharda Deelip Ware (since deceased).

2. Heard the learned Counsel appearing for applicants/accused. By taking me through the F.I.R., learned Counsel argued that case of the prosecution is based on only on oral dying declarations of deceased Sharda made to Mukta Satish Khedkar and Ranjana Shamrao Golhar. Learned Counsel argued that oral dying declaration is said to have been made while Sharda was in the vehicle, when she was being

taken to the hospital at Kharwandi. Learned Counsel then drew my attention to the statement of drivers of vehicle and submitted that they are not vouching about the so called oral dying declaration of deceased Sharda. Learned Counsel further pointed out the *Khabar* dated 1st November 2015 lodged by father of the deceased, which does not reflect alleged oral dying declaration made by Mukta Khedkar.

3. As against this, the learned A.P.P. opposed the application by contending that the offence is punishable under Section 302 of Indian Penal Code. According to learned A.P.P., there is recovery of 1-2 burnt clothes smelling kerosene from co-accused Deelip Ware. The spot panchnama also corroborates the prosecution case and, therefore, according to him, no case for anticipatory bail is made out.

4. Perused the charge-sheet. The crime in question is registered on the basis of report lodged by Asha Bhabad, mother of deceased, Sharda Deelip Ware. The F.I.R. itself shows that after sustaining burns, Sharda was taken to the hospital by Mukta Khedkar and Ranjana Golhar. Mukta Khedkar is stated to be relative of father of the deceased. Statement of Mukta Khedkar shows that upon getting information regarding sustaining burns by Sharda, she immediately went to Kharwandi and saw Sharda in burnt condition in the vehicle. Statement of Mukta Khedkar shows that Sharda was being taken for further treatment at the hospital at Ahmednagar. At that time, according to Mukta, deceased Sharda made oral dying declaration to the effect that her husband Deelip, father-in-law Wasudeo, mother-in-law Chandrakala and grand mother-in-law Sukshala have poured

kerosene on her and set her ablaze. Similar is the statement of Ranjana Golhar.

5. Statements of Mukta and Ranjana show that Sharda had made oral dying declaration to them soon after the incident while she was taken from the hospital at Kharwandi to the hospital at Ahmednagar. It appears that immediately on the very same day, i.e. on 29th November 2015, Mukta had informed the incident to Bhimrao Bhabad, father of deceased Sharda. Bhimrao then lodged report on 1st November 2015 disclosing the information received by him from his sister-in-law Mukta. That report does not disclose that Mukta informed him about commission of murder of Sharda by accused persons. Hari Gunjkar is a driver of the vehicle which carried Sharda from the hospital at Kharwandi to Ahmednagar. His statement shows that Sharda was shouting loudly in the jeep and two women were present with her. Hari Gunjkar is not stating about oral dying declaration of Sharda to Mukta and Ranjana. Satish Gaikwad is driver of the vehicle by which Sharda was carried from Dhakanwadi to the hospital of Dr. Kharmate at Kharwandi. His statement also reveals that Sharda was shouting when she was in a company of her husband father-in-law. Statement of Satish Gaikwad does not show that Sharda made any oral dying declaration at that time.

6. An Executing Magistrate was called by Police on 3rd October 2015 for recording dying declaration of Sharda, however, at that time Sharda was not in a position to make any statement.

7. On this backdrop, prima facie, it appears that the entire case of the prosecution is based on oral dying declaration made by Sharda to Mukta and Ranjana in the vehicle by which she was taken from Kharwandi to Ahmednagar. Drivers of the vehicle are not corroborating version of Mukta and Ranja. Prima facie, there seems to be no corroboration to the oral dying declaration allegedly made by Sharda to two witnesses, out of them one is near relative of father of the deceased. Both applicants are aged women. Considering the nature of allegations and quality of evidence against them and the fact that nothing is to be recovered from the applicants, custodial interrogation of both applicants is not wanted. Hence, the following order:

ORDER

(I) Criminal Application is allowed.

(II) In the event of arrest of applicants in Crime No.I-350/2015, registered at Pathardi Police Station, District Ahmednagar, for the offences punishable under Sections 302, 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code, the applicants Chandrakala Vasudeo Ware and Sukshala Limbaji Ware be released on bail, on furnishing P.R. Bond of Rs.25,000/- (Twenty-five thousand) each and on furnishing surety in the like amount.

(III) As a condition of this order, the applicants to attend concerned Police Station on 1st October 2016 and thereafter on 12th October 2016

in between 11.00 a.m. and 1.00 p.m. and to co-operate the Investigating Officer.

(A.M. BADAR, J.)

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