

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

Criminal Application No. 5235 of 2016

District : Beed

Isak s/o. Rashid Shaikh,
Age : 40 years,
Occupation : Labour,
R/o. Nitrud,
Taluka : Majalgaon,
District : Beed.

.. Applicant.

versus

The State of Maharashtra,
Through Police Station,
Dindrud, Taluka : Majalgaon,
District : Beed.

.. Respondent.

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Mr. Sudarshan J. Salunke, Advocate, for the applicant.

*Mr. S.M. Ganachari, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 30TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 3/2016 for offences punishable under Sections 147, 149, 307 and 302 of the Indian Penal Code, registered with Police Station, Dindrud, Taluka Majalgaon, District Beed, by this application, is seeking his release on

bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that similarly situated three accused persons are granted anticipatory bail by this Court vide order dated 6th June 2016 and one co-accused is thereafter granted anticipatory bail vide order on Criminal Application No. 4910 of 2016. The learned Counsel further argued that the dying declaration of Shaikh Dastagir Shaikh Maheboob is *per se* unbelievable in the wake of ocular evidence of eye witness Shaikh Asma Shaikh Mustafa, who is his grand-daughter.

3. The learned Addl. Public Prosecutor opposed the application by contending that Pashabi, who is wife of the deceased, is categorically stating that accused persons had driven Shaikh Dastagir out of the house and thereafter she saw her husband in burnt condition. The learned Addl. Public Prosecutor further argued that officially recorded dying declaration of Shaikh Dastagir is gaining further corroboration from his oral dying declaration made to his son Shaikh Mustak.

4. Perused papers of investigation. The incident in question allegedly took place on 10.02.2016 at about 07.00 a.m. According to the prosecution case, the applicant along with co-accused

incinerated Shaikh Dastagir on 10.02.2016 causing his death on 11.02.2016.

5. Prosecution case rests on officially recorded dying declaration of Shaikh Dastagir recorded while taking treatment for his burns at Government Hospital, Ambajogai, on 10.02.2016 itself. He reported to Police that when he had been to the house of Sayyad Aalam for calling his grand-children Sahil, Aasma and Sonu, all accused persons including the present applicant encircled him, poured kerosene on his person and set him ablaze causing burn injuries to him.

6. Shaikh Dastagir succumbed to burn injuries on 11.02.2016.

7. Shaikh Mustak - son of the deceased is stating about oral dying declaration of deceased Shaikh Dastagir to the said effect.

8. The officially recorded dying declaration of Shaikh Dastagir shows that he had been to the house of accused Sayyad Aalam for calling his grand-children Sahil, Asma and Sonu. The Investigation Officer has recorded statement of Shaikh Asma. She had stated in her statement that at the time of the incident, she was sitting with Sayyad Aalam and Rashadbi in the shed. At that time, one person came

wrapping blanket / shawl around his body and set himself on fire. Shaikh Asma further stated that then she identified the person who was engulfed in fire to be her grandfather Shaikh Dastagir.

9. It is well settled that the dying declaration is generally made by the declarant in absence of accused persons and because of death of the declarant, they are not having any opportunity to cross examine the declarant. As such, as a matter of fact, it cannot be said that the dying declaration contains truth and nothing but the truth. The arena of scrutiny of dying declaration is very limited and as such the Court cannot afford to sideline version of Shaikh Asma who is none else but the granddaughter of the deceased.

10. Considering this nature of evidence against the present applicant, his further pre-trial detention is not warranted.

11. 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. 30,000/- 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 directions :-

(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, in the event of filing charge-sheet against him.

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

12. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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