

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5540 OF 2016

Dhanraj S/o Kacharusingh Jarwal,
Age – 25 years, Occu. – Agriculturist,
R/o – Sanjarpurwadi,
Taluka – Vaijapur,
District – Aurangabad .. Applicant

Vs.

The State of Maharashtra
Through Shiur Police Station,
Vaijapur, District – Aurangabad .. Respondent

Mr. N.R. Shaikh, Advocate for the applicant
Mr. V.S. Badakh, APP for the respondent/State
Mr. Mujtaba Gulam Mustafa, Advocate to assist APP

CORAM : A.S. CHANDURKAR, J.
DATE : 01/12/2016

ORAL ORDER :

Heard.

2. The applicant, who has been arrested on 28/10/2015 in Crime no.I-135 of 2015 registered at Shiur Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Section 302, 307, 498-A r/w. 34 of the Indian Penal Code, seeks his release under Section 439 of the Code of Criminal Procedure.

3. As per the FIR dated 27/10/2015, brother of one Vandana lodged report that she was married with the applicant but was being harassed by the applicant and his parents over the demand of dowry. The informant received information on 26/10/2015 that his sister had been burnt. Said Vandana expired on 01/11/2105. On that basis, aforesaid report came to be lodged. After completion of investigation, chargesheet has been filed on 22/01/2016.

4. It is submitted by learned counsel for the applicant that the prosecution purports to rely upon three dying declarations but each of them was not consistent with the other. In the first dying declaration dated 26/10/2015, said Vandana has stated that the applicant had first beaten her with spray can and had thereafter poured diesel on her body and set her ablaze. In the second dying declaration dated 27/10/2015, it has been stated that the applicant had first assaulted her and had thereafter poured diesel on her body and had set her ablaze. As the door was locked and she could not come out, the wall of the house was broken by her and she came out. She went towards her

mother-in-law, who tried to extinguish the fire. The third dying declaration implicates the applicant and her father-in-law, as having set her on fire. In that backdrop, it is submitted that contents of each dying declaration is inconsistent with the other. It is further submitted that applicant had suffered 96% burns and her upper limbs were totally burnt. Therefore, ridges of her thumb impression seen in the dying dying declaration, appear to be improbable. It is then submitted that as per the oral dying declaration given to her brother, the applicant and his entire family including the mother-in-law have been implicated. He also referred to the evidence of two witnesses namely, Sandip and Jaysing to indicate that presence of present applicant at the site was doubtful. He therefore submitted that in the light of this evidence, case for enlargement of the applicant on bail, has been made out.

5. Application is opposed by learned Additional Public Prosecutor by submitting that in all the three dying declarations, the applicant has been named. Inconsistency, if any, is minor in nature and, therefore, there is no case made out to release the

applicant on bail. He referred to the evidence of brother of the deceased to indicate that said Vandana has stated before him that the applicant had set her on fire.

. Learned counsel assisting the prosecution, also supported the aforesaid submissions. He submitted that merely because the deceased has spoken in her local dialect with her aunt, her version cannot be disbelieved. He submitted that considering the seriousness of the offence, the applicant does not deserve to be released on bail.

6. Perused the FIR as well as the chargesheet. On *prima facie* consideration of the material on record, certain inconsistencies in the dying declarations can be noticed. While in the first dying declaration, the applicant alone has been implicated, in the second dying declaration, it is stated that when the deceased was set on fire, she came outside by breaking open the wall, after which her mother-in-law tried to extinguish the fire. In the third dying declaration, there is no reference to the mother-in-law but instead, it is stated that the father-in-law has poured diesel on her and she

was set on fire by the applicant.

7. Considering these inconsistencies in the dying declarations coupled with the statement of Sandeep and Jaysing, which cast doubt as to presence of present applicant, a strong case has been made out by the applicant. Statements of Vikram and Pratap indicate self-implication by the applicant. They are however related to the deceased. Moreover, in the oral dying declaration, the mother-in-law as well as two sisters-in-law have also been implicated. Considering the aforesaid material on record, case for releasing the applicant on bail has been made out. Moreover, chargesheet has been filed on 22/1/2016 and the trial has not yet commenced.

8. In view of aforesaid, the following order :-

ORDER

I) The Application is allowed.

II) The applicant is directed to be released on bail pursuant to his arrest in Crime No.I-135 of 2015

registered at Shiur Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Section 302, 307, 498-A r/w. 34 of the Indian Penal Code, upon executing P.R. bond of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount.

III) The applicant shall attend the Court of learned Sessions Judge, Vaijapur, District – Aurangabad on 15th of every Month or as per the directions of the learned Sessions Judge.

IV) The applicant shall not take any steps to tamper with the prosecution witnesses.

9. It is clarified that the observations made in this order are only for deciding the present Application.

10. Criminal Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

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