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

CRIMINAL APPLICATION NO. 6621 OF 2016

1. Radhabai w/o Shivaji Chite,
Age: 65 years, Occu: Household,
R/o Pawannagar, Ranjangaon Shenpunji,
Waluj, Aurangabad
2. Shivaji s/o Vithoba Chite,
Age: 70 years, Occu: Labour,
R/o as above
3. Geeta w/o Punjaram Chite,
Age: 28 years, Occu: Household,
R/o as above

..APPLICANTS

VERSUS

The State of Maharashtra,
Through MIDC Waluj Police Station

..RESPONDENT

Mr S. M. Biyani, Advocate for applicants;
Mr S. N. Morampalle, Addl. Public Prosecutor for respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 16th December, 2016

ORAL ORDER :

Heard.

2. The applicants apprehend their arrest in connection with C.R. No.518 of 2016, registered at MIDC Waluj Police Station, Aurangabad, for offences punishable under Sections 307 (later on Section 302 added), 498-
A read with Section 34 of the Indian Penal Code.

(2)

3. As per the first information report dated 20th September, 2016, the daughter-in-law of applicant nos.1 and 2 and sister-in-law of applicant no.3 reported that in the morning at about 7.00 a.m. her husband had quarrelled with her and had sought to send her back to her parental house. Applicant no.3 had held said Vidya, applicant no.1 had poured kerosene on her body and applicant no.2 had set her on fire. On this basis aforesaid report initially under Section 307 of the Indian Penal Code came to be registered. Said Vidya subsequently expired on 24th September, 2016.

4. It is submitted by the learned Counsel for the applicants that the applicants have been falsely implicated. Referring to the remand papers produced before the learned Sessions Judge, it is submitted that a dying declaration came to be recorded in which the victim had not blamed anybody. It is, therefore, submitted that the first information report lodged after about 36 hours after the parents of the victim had come there, cannot be relied upon. Hence, it is prayed that protection be granted.

5. The application is opposed by the learned Addl. Public Prosecutor by relying upon the police papers. He has referred to the statements of the victim as well as that of her mother. It is submitted that considering gravity of the offence, application deserves to be rejected.

6. Perused the police papers. It is found that a dying declaration of Vidya has been recorded between 6.25 p.m. to 7.00 p.m. of 20th September, 2016. Therein she has clearly stated that while cooking food

(3)

there was blast of the stove due to which her clothes caught fire. It is stated that she had no grievance against any person. This dying declaration has been recorded by the Naib Tahsildar along with the endorsement of the Doctor. Hence, the subsequent statements in which applicants are implicated, *prima facie* appear to be an afterthought. Considering the dying declaration which is the first statement in time, the applicants are entitled for protection.

7. In view of aforesaid, in the event of applicants' arrest, in connection with C.R. No.518 of 2016, registered at MIDC Waluj Police Station, Aurangabad, for offences punishable under Sections 307 (later on Section 302 added), 498-A read with Section 34 of the Indian Penal Code, they shall be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(i) The applicants shall attend the concerned police station as and when directed by the Investigating Officer.

(ii) No steps be taken to influence the prosecution witnesses.

8. Observations made in this order are only for deciding the present application. Same is allowed and disposed of.

(A.S. CHANDURKAR, J.)

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