

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.96 OF 2016

Mangal Vijay Kharat & Anr.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. Jayesh Kocheta, Adv. for the applicants.
Mr. D.P. Adsule, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 29th February, 2016.

P.C. :

1. This is an application for bail filed by the aforesaid applicants who have been arrested in Crime No.90 of 2015 for offences punishable under Sections 302, 323 & 504 r/w.34 of the IPC.

2. The case of the prosecution in brief is that on 27th March, 2015 at about 11.30 pm the applicant No.1 and her husband the applicant No.2 had sprinkled kerosene on Vaishali Kale and set her on fire as a result Vaishali sustained burn injuries.

3. Mr. Kocheta, the learned counsel for the applicants submitted that the dying declaration of Vaishali is not recorded by Executive Magistrate. He has submitted that the dying declaration recorded by PSI cannot be relied upon.

4. Mrs. Mulekar, the learned APP for the State has submitted that there is prima facie material to show the involvement of the applicant in commissions of the said crime. The offences are of serious nature and hence the applicants are not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The records prima facie reveal that Vaishali Kale was admitted in the hospital on 28th Marcy, 2015, with history burning. Her statement was recorded by PSI on the same day. She had stated that on 27th March, 2015 at about 11.30 pm, she had questioned the applicants as to why they had constructed steps in front of her house she had stated that the applicants had abused and assaulted her by giving slaps. She had further stated that the applicant No.2 had sprinkled kerosene on her body and that the applicant No.1 had ignited a matchstick and set her on fire. She had stated that the neighbours who had gathered at the place of the incident had doused the flames by pouring water. The said statement bears an endorsement of the doctor that the victim was conscious and in sound state of mind to make the statement. A perusal of the statement also indicates that said statement was read over and explained to the victim and the same was recorded as per

her say. The victim Vaishali expired on 4th April, 2015 and the statement postulates character of dying declaration which prima facie proves the complicity of the applicant in the said crime.

6. The statements of the mother and the husband of the victim also prima facie indicate that the victim had told her that the applicant and her husband had set her on fire. The post mortem report indicates that the victim Vaishali had expired as a result of 'septicemia due to burns'.

7. The material on record thus prima facie shows the involvement of the applicants in committing a crime which is of serious nature. The trial has not commenced. Most of the witnesses are residing in the same locality. Releasing the applicants on bail at this stage can hamper the trial. Considering the above facts and circumstances, the applicants are not entitled for bail.

8. Hence the application stands dismissed.

(ANUJA PRABHUDESSAI, J.)