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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.189 OF 2016

Abedabi @ Abidabi Amirbasha
Mujawar

.... Applicant

V/s.

The State of Maharashtra

.... Respondent

Mr. Jaydeep D. Mane, for the Applicant.

Mr. S.S. Pednekar, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 14th JUNE, 2016.

P.C. :

1. The applicant-accused, in Crime No.103 of 2015, registered with Mandrup Police Station, District: Solapur, for the offence punishable under Sections 302, 498A, 323, 504, 506 read with 34 of the Indian Penal Code, by this application, is praying for releasing her on bail.
2. Heard the learned counsel for the applicant as well as the learned APP.
3. The learned APP argued that apart from officially recorded dying declarations, there are oral dying declarations made by deceased Reshma to her father Rafiq Patel as well as to her mother Rashida. As such the complicity of the applicant in the crime is well established.

4. Perused the charge sheet. In the year 2002, Reshma -daughter of informant Rafique Patel and witness Rashida was married to Kamil, the son of present applicant Abeda. The incident of alleged incineration of Reshma by her husband and in-laws took place on 14.7.2015, at her matrimonial house. Reshma succumbed to burn injuries on 16.07.2015. The report of postmortem examination shows that she died due to shock caused by burns. The perusal of postmortem report shows that deceased Reshma had sustained 87% antemortem burn injuries. It is, thus, clear that she had suffered extensive burn injuries. Her head, neck and face suffered 8% burn injury meaning thereby that said part of her body was completely charred.

5. According to the prosecution case, on the date of incident of sustaining burns by Reshma, her three dying declaration came to be recorded, officially; apart from her oral dying declarations to her parents. Her first dying declaration came to be recorded by police Head Constable at about 10.00 a.m. on 14.7.2015. It is reflecting accidental burns. Reshma has disclosed to the Police Head Constable that while she was cooking rice, stove flared and her saree caught fire causing burns. Thereafter at 11.45 a.m. her dying declaration came to be recorded by the Special Executive Magistrate. Prior to recording this dying declaration, the Doctor at Civil Hospital, certified her to be fit for giving declaration.

She stated that she sustained burns as her saree caught fire by falling on hearth. The third officially recorded dying declaration does not bear the time of its recording. It was recorded by some Police Head Constable whose buckle Number is also not mentioned thereat. In this dying declaration, declarant has stated that her father-in-law Ambir Pasha Mehboob Mujawar had gone for Namaj in Masjid. The declarant Reshma further stated that her mother-in-law i.e. present applicant poured kerosene on her person and set her ablaze by burning match stick. She further stated that her husband was standing nearby and he also conspired in the act, but subsequently extinguished the fire by pouring water. This one is only implicating the husband and the mother-in-law.

6. Apart from the third officially recorded dying declaration, oral dying declaration of Reshma to her father Rafique, reflected in the F.I.R. is to the effect that her mother-in-law Abeda had poured kerosene on her person and her husband Kamil caused her fall and thereafter her father-in-law, Ambir Pasha took match stick and handed over the same to her husband, who set her ablaze. Similar is her oral dying declaration made to her mother Rashida.

7. A bare glance at these dying declaration goes to show that they are not consistent in material particulars. Two officially recorded dying declarations are disclosing that Reshma suffered accidental burns;

whereas the third one is not at all consistent with the other two oral dying declarations allegedly made to her parents. The third officially recorded dying declaration shows absence of the father-in-law, from the spot and the act of setting her ablaze is attributed to her mother-in-law, by deceased Reshma. It hardly needs to mention that in case of multiple dying declarations, first in point of time is required to be given due weightage which in the instant case shows accidental burns. Considering the nature of evidence against the present applicant, though the offence is alleged to be under Section 302 of the Indian Penal Code, her pretrial detention is not warranted. Possibility of accidental burns to deceased Reshma cannot be ruled out. As such on completion of investigation, the applicant deserve to be released on bail. As such the following order.

Order

- i) The application is allowed.
- ii) Pending disposal of trial, the applicant/accused in above crime, be released on bail on her executing P.R. bond in the sum of Rs.10,000/- and on furnishing surety in the like amount.
- ii) As a condition of this order, the applicant should attend concerned police station as and when reasonably called by the Investigating Officer.
- iii) The applicant should not extend any threat, promise, inducement to the persons acquainted with the facts of case

so as dissuade them from disclosing the same either to the Court or to the police.

iv) The applicant should not tamper with the prosecution evidence in any manner.

v) The applicant should co-operate in expeditious disposal of trial.

[A. M. BADAR, J.]