

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 558 OF 2016

Prashant Sampat Konde

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Satyavrat Joshi Advocate for Applicant.

Mr. Rushikesh Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 23, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 27/01/2015 in crime no. 1 of 2015 registered at Rajgad Police Station for offence punishable under sections 302, 307, 498 (A), 504, 506 r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 29/12/2014, the wife of the present Applicant namely Jyoti was admitted in the hospital with history of burn injuries. That her statement was recorded by the Police. She has given the statement that on 29/12/2014, her mother-in-law had been for washing clothes whereas her father-in-law had been to agricultural land. Her daughter

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had been to school and her son was sleeping. At about 10.30 a.m., when she was in the process of cooking food on the stove, the stove had blasted. According to her, she has a gas connection in the house, but gas was not working on that day and therefore she had lit the stove. According to her, when she was cooking food, she had sustained accidental burns. Her husband had extinguished the flames. That in the process of extinguishing the flames, the husband had also sustained burn injuries and he was also admitted in the hospital. Senior Police Inspector of Haveli Police Station was informed on 02/01/2015 that the Applicant had sustained burn injuries while he was in the process of extinguishing the flames which had engulfed his wife accidentally. Jyoti was under treatment.

3) On 01/01/2015, the statement of Jyoti was once again recorded by the police in which she has disclosed that on 28/12/2014, there was a quarrel between her and her mother-in-law. That her mother-in-law had informed about her misbehaviour to her husband who had scolded her. On 29/12/2014 at about 11.00 a.m., when she was cooking food, she had poured kerosene on herself and thereafter, there was a quarrel between the Applicant and his wife and after realizing that she has poured kerosene on herself, the husband i.e.

present Applicant had lit a match stick and had thrown it on her person, due to which she had sustained burn injuries. In the second statement, she has informed the police that thereafter, her husband, with the help of the neighbours, had admitted her in the hospital.

4) Perused the papers of investigation. *Prima facie*, it appears that there are inconsistent dying declarations. The first dying declaration would indicate that it is because of accidental burns whereas the second dying declaration would indicate that after the victim had attempted to commit suicide by pouring the kerosene, the Applicant had ignited the match stick and threw on her person.

5) It is pertinent to note that the statement of the victim has not been recorded by Executive Magistrate or any Judicial Magistrate. The victim had succumbed to the burn injuries on 03/01/2015.

6) The learned counsel for the Applicant rightly submits that in view of the inconsistent dying declaration, it may be difficult to sustain the conviction against the Applicant and therefore, further incarceration would not be warranted as it may amount to punitive detention.

7) Taking into consideration the facts of the case, papers of investigation

and the submissions advanced across the bar, this Court is of the opinion that the Applicant is entitled to be enlarged on bail, moreover, the investigation is completed and charge-sheet is filed. It is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.
- (iii) Applicant shall report to the concerned police station on alternative Sunday, between 10.00 a.m. to 12.00 noon, till the framing of the charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)