

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 599 OF 2016

Narayan Maruti Dhole.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Aniket U. Nikam i/b. Mr. Aashish Satpute, advocate for Applicant.

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

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 14, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers of investigation.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is charge-sheeted for the offence punishable under Section 302, 498A, 323, 504, 506 read with section 34 of the Indian Penal Code in crime No. 220 of 2015 registered at Yevla Taluka Police Station on 20/11/2015.

3 It is the case of the prosecution that present applicant happens to be brother-in-law of Sunanda Dhole. On 20/11/2015 Sunanda was taken to Rural Hospital at Yeola with history of burn injuries. At the time of admission, her statement was recorded. She had disclosed the names of her mother-in-law, father-in-law and the present applicant as the persons who had poured kerosene on her and her mother-in-law had set her ablaze. She was taken to the hospital by her relatives. The said history was recorded at 1.50 p.m. At about 2.05 p.m. medical officer of the Rural Hospital had endorsed upon the statement as “patient was conscious and well oriented”.

4 According to the prosecution, on 20/11/2015 brother of Sunanda namely, Nanasaheb Bhimraj Gaikwad lodged a report at the police station alleging therein that his sister was married to the brother of the present applicant on 12th May, 2008. That she was being ill-treated in her matrimonial house. She had complained about the same on several occasions, when she visited her maternal house.

That on 20/11/2015 in the morning at about 11 a.m. Sunanda had called the complainant on his cell phone and had disclosed to him that the members of her matrimonial family had poured kerosene on her and set her ablaze. That he had rushed to the house of Sunanda and she was taken to the rural hospital by her relatives. On the basis of the report lodged by Nanasaheb Gaikwad Crime No. 220 of 2015 was registered at Yevla Taluka Police Station against the present applicant and other accused for offence punishable under Section 307, 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

5 The papers of investigation would reveal that on the same day, Sunanda was taken to Sadguru Hospital, which is multi specialty, critical care and trauma care center. The certificate issued by Sadguru Hospital dated 24/11/2015 indicates that on 20/11/2015 at about 3.10 p.m. Sunanda was brought to Sadguru Hospital with alleged history of homicidal burn by pouring kerosene and igniting her by her husband. When the patient was admitted, she was in semi

conscious state but she was oriented. But due to laryngeal oedema, she was unable to communicate verbally. The victim was diagnosed with approximately 90% superficial to deep flame burns and respiratory components also involved.

6 The papers of investigation shows that Sunanda had succumbed to the burn injuries on 25/11/2015 and hence, section 302 of the Indian Penal Code was added. Supplementary statement of the complainant was recorded on 16/12/2015 in which he has disclosed his cell phone number as 9923088917. In the course of investigation it was revealed that the said SIM card was in the name of one Sanjay Shankar Tayade. The investigation papers further reveal that the said SIM card was activated on 11th April, 2007 and deactivated on 25th May, 2012. The investigating agency had called for the call details record of both the numbers given by the first informant in his supplementary statement and the report dated 18/12/2015 indicates as follows : “No records found for the request.”

7 On 24/11/2015 statement of the victim was recorded in the hospital by the police constable of Yeola Taluka Police Station. The said statement has been treated as dying declaration since she has succumbed to the burn injuries. According to the victim, on 20/11/2015 at about 9 a.m. she had been to the agricultural land to bring onions. Her mother-in-law had taken her home from the agricultural land. At that time, all the accused were present in the house. The accused had insisted upon her to fetch money from her parents or in the alternative, she would be set ablaze. That at about 10 a.m. her brother-in-law i.e. the present applicant had exhorted other accused persons to set her ablaze, in the eventuality that she does not succumb to the demands made by them.

8 It is a matter of record that the statement of victim was read over to her in the presence of the first informant and mother of the victim. Learned Counsel for the applicant submits that it is apparent

on the face of the record that the possibility of statement being tutored cannot be ruled out.

9 The learned Counsel for the applicant further submits that father-in-law, husband and sister-in-law of the victim have been enlarged on bail. The mother-in-law has not been enlarged on bail as specific role has been assigned to her. The role attributed to the present applicant appears to be that of exhorting the co-accused of setting the victim ablaze. The investigation is completed and charge-sheet is filed. The statement recorded at Sadguru Hospital indicates that the victim was set ablaze by her husband, who has been enlarged on bail.

10 Hence, taking into consideration the fact that the investigation is completed and charge-sheet is filed and the role assigned to the present applicant, he deserves to be enlarged on bail.

11 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The co-accused who are in custody shall not claim parity with the present applicant. It is also made clear that the learned Sessions Judge shall not be influenced by the above observations at the time of trial.

12 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The 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) The applicant shall report to concerned police station on first Monday of each month till framing of charge.
- (iv) The applicant shall not tamper with the evidence.

(v) The applicant shall furnish his residential address and contact details with the investigating officer.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)