

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 730 OF 2016

Shivaji Arun Bade	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Sachin Thombare a/w Mr. Somnath Gaikwad i/b. Mr. Satyam
Nimbalkar, Advocate for the applicant.
Mr. R.M.Pethe, APP, for the State.
Mr. Nilesh Bodakh, API, Karmala Police Station, Solapur, present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 13th October, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 2.9.2015 in Crime No.216 of 2015
registered at Karmala Police Station on 7.9.2015 initially for the offence
punishable under Sections 307, 341, 452 and 504 of the Indian Penal Code.
The investigation is completed and charge-sheet is filed.

2. It is the case of the prosecution that on 1.9.2015, one Devai
Shrihari Lagas, who happened to have intimate relations with the present
applicant, was admitted in the Sub District Hospital at Karmala with
history of burn injuries. That on 2.9.2015, the statement of the injured was
recorded. In her statement the injured disclosed to the police that the
applicant, who is 60 years old, was residing with her. The applicant has

agricultural land. She had disclosed that she was insisting upon him to transfer one acre of land in her name. He had denied the same and, therefore, there used to be intermittent quarrels between the injured Devai and the present applicant. She also disclosed that he had threatened her of dire consequences in the past. According to her, on 1.9.2015, when she was at home, the applicant had visited her house under the influence of alcohol. There was a trifling quarrel between them. Thereafter, he had questioned as to why she was insisting upon him to transfer one acre land and in the said quarrel, he had poured kerosene on her and set her ablaze. She has further disclosed that she had tried to get out of the house and cried for help. At that time, one Maqbool Shaikh had taken her to Cottage Hospital at Karmala. She had sustained burn injuries to her neck, both hands, stomach, chest, legs and thighs. The police had reached the Cottage Hospital at Karmala. Thereafter, she was transferred to Burns Hospital at Pune.

3. It is pertinent to note that statement of the injured was not recorded by the police at Cottage Hospital, Karmala.

4. Perused the papers of investigation.

5. The medical case papers would clearly show that there was history of suicidal burns. It also shows that she was admitted in the hospital by the present applicant. The case papers would also show that the

applicant had also sustained burn injuries. The victim was under treatment. She succumbed to the burn injuries on 9.9.2016. The medical case papers show that on 1.9.2015 at about 11.50 p.m., the history recorded was 'alleged history of homicidal burns and that she had sustained 60% burns'. She had sustained 9% deep burn injuries on each arm. The limbs were burnt. On 1.9.2015, the endorsement on the case papers show "Refer to Civil Hospital Solapur". The case mainly rests upon the dying declaration.

6. The learned counsel for the applicant rightly submits that despite the fact that she had sustained deep burns the thumb mark on the statement of the victim would show that the ridges of the thumb mark was clear. The statement was signed by the relatives of the victim. The medical case papers show that on 2.9.2015, the daughter-in-law and the husband of the victim were present in the hospital.

7. It is pertinent to note that the injured was unable to breath normally. Her blood pressure was low and, therefore, she was to be kept on a ventilator. The consent was obtained from the relatives and the patient was kept on ventilator on 2.9.2015. The scene of offence panchnama also does not show that there was any hearth in the house. The victim has not stated that it was the applicant who had admitted her in the hospital.

8. The case mainly rests on the dying declaration. The deceased

had not stated that the applicant had attempted to extinguish the flames or that he had sustained burn injuries. The investigating agency has not recorded the statement of the doctor in whose presence the dying declaration was recorded. Initially history as is reflected in medical case papers is history of suicidal burns.

9. Be that as it may, the learned counsel for the applicant submits that the complainant is more than 60 years old. He had also sustained severe burns in the course of extinguishing the flames. She needs to be treated. Taking into consideration all the abovementioned facts, the applicant deserves to be enlarged on bail.

10. The observations are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on

first Sunday of each month till framing of charge.

The application is disposed of.

(SMT.SADHANA S.JADHAV, J.)