

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

**CRIMINAL BAIL APPLICATION NO. 988 OF 2016**

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|---------------------------|-----------------|
| Sagar Damodar Zole.       | ... Applicant.  |
| Versus                    |                 |
| The State of Maharashtra. | ... Respondent. |

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Mr. Sanjay P. Shinde, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

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**CORAM : SMT. SADHANA S. JADHAV,J  
DATE : OCTOBER 15, 2016**

**P.C.:**

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

2     This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 25/11/2015 in Crime No. 89 of 2015 registered at Nashik Taluka Police Station for offence punishable under Section 302 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that the applicant herein is married to Pooja. The couple was blessed with a son and a daughter. That on 23/11/2015 Pooja was admitted in Civil Hospital, Nashik with history of burn injuries. Upon realising that it is a medico legal case, the statement of the injured was recorded. She had specifically stated in the said statement that she was being harassed by her husband as he used to suspect her character. On several occasions her in-laws had even tried to pacify their quarrel. However, it was of no avail. Pooja had decided to stay with her parents. The applicant had accompanied her to the maternal house and they were residing with the parents of Pooja at Koliwada, Vilholi, Taluka-Dist. Nashik. She had disclosed that on 22/11/2015 her husband i.e. the present applicant had returned home under the influence of alcohol. He had picked up quarrel with Pooja by suspecting her character. There was an altercation between the husband and wife. On 23/11/2015 in the early hours at about 5.30 p.m. the applicant is alleged to have picked up quarrel with Pooja and during the altercation, poured kerosene on

her and set her ablaze. When he saw her in flame, he attempted to extinguish the flame. But soon thereafter, he had realised that she had sustained deep burn injuries, he had fled from the house. She was admitted in the hospital by her mother and relatives. Pooja had succumbed to the burn injuries on 27/11/2015.

4 The learned Counsel for the applicant submits that the applicant had attempted to save his wife. It is also submitted that the applicant has two minor children and aged parents, to be looked after and therefore, prayed for grant of bail. It is also submitted that there is no eye witness to the incident and that the injured had not raised any hue and cry and therefore, according to the learned Counsel for the applicant, Pooja had attempted suicide.

5 Upon perusal of the papers of investigation, it is apparent that Pooja had sustained about 66 per cent burn injuries. That the case rests on dying declaration and the dying declaration by itself is sufficient to record a conviction. This is a case of custodial death.

The contention that there is no eye witness to the incident cannot be considered in view of the fact that there is a dying declaration. There is incriminating material against the applicant. Hence, the application being sans merits stands rejected.

6      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 learned Sessions Judge shall not be influenced by the same at the time of trial.

7      The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)