

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

CRIMINAL BAIL APPLICATION NO. 998 OF 2016

Ganesh Parshuram Pardeshi. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Satyavrat Joshi, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

Mr. M.P. Bansode, Police Havildar, Vakad Police Station, Pune City.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 20, 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 25/5/2016 in Crime No. 237 of 2015 registered at Wakad Police Station, Pune City for offence punishable under section 302 of the Indian Penal Code. The investigation is completed and charge-sheet is filed. The case is

committed to the Court of Sessions and registered as Sessions Case No. 599 of 2015.

3 It is the case of the prosecution that on 21st May, 2015 Koyal Pardeshi lodged a report when she was in the hospital alleging therein that on 20th May, 2015, when she was returning home alongwith her mother and was passing in front of Evana Building, suddenly someone had poured kerosene on person of her mother and set her ablaze. She could not ascertain the identity of the person who had set her ablaze. In the course of extinguishing the fire, she had also sustained burn injuries. They were taken to Spandan Hospital. From there, they were transferred to Rao Nursing Home. The history of the patient recorded in Rao Nursing Home at the time of admission is of homicidal burns on 20th May, 2015 at 10 p.m.

4 It appears from the papers of investigation that on 22nd May, 2015, the statement of the elder sister of the first informant was recorded. She had disclosed to the police that she had given birth to

two daughters and therefore, she was subjected to cruelty and ill-treatment. Her husband wanted to get re-married but was sure that her mother would not allow re-marriage. In the course of quarrel, her husband had threatened that he would, some day, set her mother on fire. It is also disclosed that some days prior to the incident he had kept bag in his house containing a bottle of kerosene mixed with petrol, cigarette lighter and one plastic mug in his house and used to go out on two wheeler with the bag every day. That bag was missing from her house.

5 It appears from the papers of investigation that prima facie on the basis of the said statement, the applicant was arrested on 22/5/2016. The statement of the mother of the first informant i.e. Yogita Pardeshi was recorded on 31st May, 2015 for the first time by the API of Wakad Police Station in question and answer form. She had disclosed that she had suspected that the present applicant, who happens to be her son-in-law had set her on fire.

6 The learned Counsel for the applicant at this stage submits that upon perusal of the statement of Yogita, it is clear that the said statement was not read over to the deponent and recorded. Hence, according to him, even at this stage, prima facie, it can be seen that the statement was tutored. From the statement of Soni, it appears that on the very next day of the incident, the applicant was called to Wakad Police Station for enquiry. In fact, the first informant registered FIR against unknown person and nobody had seen the applicant anywhere closest in the proximity of the incident. The injured Yogita Pardeshi had succumbed to the injury on 26/6/2015. The learned Counsel for the applicant has drawn attention of this Court to the medical case papers of Rao Nursing Home which clearly shows that there was tracheostomy performed on injured. That she was sedated and paralysed. She was not in a position to give the statement as was recorded by the doctor on 21/5/2015. The learned Counsel for the applicant rightly submits that there is nothing on record to even remotely indicate as to when the patient regained

consciousness as to able to give statement. She had suffered superficial to deep burn injuries on her neck, chest, face also.

7 Be that as it may, the applicant herein happens to be the son-in-law of the deceased Yogita Pardeshi. The first informant has not stated that she had seen the applicant in close proximity of the scene of offence at the time of incident. It appears that on the basis of the statement of the wife of the applicant, he was arrested. The dying declaration of the injured is recorded almost after 11 days of the incident. The learned Counsel has demonstrated the lacunas in the dying declaration, which cannot be considered at this stage and would be a matter of appreciation of evidence at the time of trial. As on today, the applicant deserves to be enlarged on bail since the charge-sheet is filed on condition that the applicant shall not enter within the jurisdiction of Wakad Police Station and Chandan Nagar Police Station till the conclusion of the trial.

8 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.

9 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 more sureties in the like amount.
- (iii) The applicant shall not enter within the jurisdiction of Wakad Police Station and Chandan Nagar Police Station till framing of charge.
- (iv) The applicant shall cause his presence before the Investigating Officer of Wakad Police Station on 1st and 3rd Sunday of each month between 10 a.m. to 12 noon till framing of charge.
- (v) The applicant shall not tamper with the evidence.

The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)