

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

CRIMINAL BAIL APPLICATION NO. 1071 OF 2016

Imran Iqbal Tamboli

... **Applicant.**

Versus

The State of Maharashtra

... **Respondent.**

Mr. Deepak K. Girme for the Applicant.

Mr. S. S. Pednekar, Asst. Public Prosecutor for the Respondent.

CORAM : A.M. BADAR, J.

DATE : 26TH JULY, 2016.

P.C. :

1] The applicant/accused in Crime No.8 of 2016 for the offences punishable under Sections 307, 302, 504, 506, 201, 323 read with 34 of the Indian Penal Code (IPC) registered at Faras-Khana Police Station, Pune, by this application is seeking his release on bail.

2] Heard the learned counsel for the applicant/accused. The learned counsel argued that in the First Information Report (FIR)/statement of the deceased, identity of the present applicant is not established as assailant. The learned counsel further argued that

this first dying declaration of Sawan Dharma Rathod is totally inconsistent with his subsequent dying declaration made to Yuvraj Ade. Therefore, in submission of the learned counsel, in view of Judgment of Hon'ble the Supreme Court in the matter of ***Mehiboobsab Abbasabi Nadaf vs. State of Karnataka, reported in 2007 (3) Crimes 291***, these contradictory dying declarations would reveal that evidence against the present applicant is too weak to infer his complicity in the offence punishable under Section 302 of the IPC. The learned counsel further argued that test identification parade, memorandum of which is not supplied to the accused came to be conducted after a period of 50 days from arrest of the present applicant. The learned counsel placed reliance on Judgment of the Allahabad High Court in ***Sham Sing Vs. State of Uttar-Pradesh, reported in 2003 Criminal Law Journal 3441*** and submitted that evidence of identification is also not reliable. Hence, according to the learned counsel for the applicant, the applicant is entitled to be release on bail.

3] The learned Asst. Public Prosecutor opposed the

application by drawing my attention to statements of two eye witnesses namely Imran Ali Shaikh and Abdula @ John Shaikh and submitted that there is direct evidence to connect the applicant to the crime in question.

4] With the assistance of the learned counsel appearing for the parties, I have perused the Charge-sheet annexed to the application. The incident in question happened on 13/1/2016. One Savan Rathod is alleged to have suffered burn injuries in that incident. He succumbed to those injuries on 15/1/2016. The postmortem report shows that Savan died because of shock due to burns. Now let us examine whether *prima facie* complicity of the applicant in this offence which is punishable either with death or life imprisonment is established. Savan Dharma Rathod (Deceased) made a statement to police on 13/1/2016, itself which was treated as his FIR and now because of his death, it becomes his first dying declaration. In this dying declaration, the declarant averred that after consuming liquor with his friends he was proceeding towards “Fadke Haud” area by road. Near Pawle square one person caught hold of his caller and took

him to a lane near Kalika Mata Temple. That person and his two or three associates then questioned him by alleging that he is committing theft of the batteries of two wheelers. Thereafter, according to the declarant, these persons poured petrol, which was taken out from the two wheeler on his person and set him ablaze. This declaration shows name of the assailant as Ibbu, Zuber and Imran.

5] Another oral dying declaration is alleged to have been made by Sawan Rathod to some persons including Yuvraj Ade. Statement of this witness goes to show that the deceased had told him how he sustained burning injuries. The deceased had told this witness that few persons asked him whether he belongs to Hindu Religion and on getting affirmative answer, those persons poured petrol on his person and incinerated him.

6] Though, the reason in both these dying declaration for burning the victim is different but the fact remains that consistent version of the declarant is to the effect that accused persons had set him ablaze in a lane. Therefore, at this juncture it is not possible to

give benefit of the ratio of Judgment in the case of ***Mehiboobsab Abbasabi Nadaf (Supra)*** to the applicant as this Court is considering the matter from the angle of grant or refusal of the bail at pre-trial stage. During investigation statement of witnesses named as Imran Ali Shaikh and Abdulla @ John Mohammad Shaikh came to be recorded by the Investigating Officer. These witnesses, in unison have stated that Zuber and Ibrahim Shaikh who are brothers of Imran Tamboli informed Imran that they had apprehended a person who commits theft of batteries. Thereafter, Imran Tamboli questioned the apprehended boy regarding the theft. Then they went to a woman at the Scrap Shop. The woman present in the shop denied to have purchase battery from that apprehended boy. Both these witnesses made a congruous statement that thereafter they all came to Pawale Chowk. Thereafter, apprehended boy alighted from the tempo and went in a lane behind the temple. According to both these witnesses, Imran Tamboli i.e. the present applicant alongwith Zuber and Ibrahim followed that boy in the lane. As per version of both these witnesses after 10 to 15 minutes Imran, Zuber and Ibrahim came out of that lane behind that boy who was in burnt condition.

7] *Prima facie* it is seen that both dying declarations of Sawan Rathod gains corroboration in material particulars from version of these two witnesses. As such it can not be said that there is no *prima facie* evidence to connect the applicant to the offence punishable under Section 302 of the IPC.

8] In the result, no case for bail is made out. The application is therefore, rejected.

(A.M. BADAR, J.)