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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.374 OF 2016  
WITH  
CRIMINAL APPLICATION NO.446 OF 2016**

|                        |               |
|------------------------|---------------|
| Shaukat Mulani         | ..Applicant.  |
| V/s.                   |               |
| State of Maharashtra   | ..Respondent. |
| AND                    |               |
| Ayesha Jahangir Mulani | ..Intervenor. |

Mr.Sushant S. Prabhune for the applicant.

Ms.R.M.Gadhvi, APP for respondent-State.

Mr.Ranjeet S. Hagre for the intervenor

**CORAM : A.M.BADAR, J.**

**DATED : 14TH JULY, 2016**

**P.C. :-**

1. Heard the learned counsel for the applicant / accused. He argued that statement of deceased Jahangir, which is treated as an F.I.R. cannot be a dying declaration. According to the learned counsel for the applicant, request to the Executive Magistrate for recording the statement of Jahangir Mulani was pending but his statement was never recorded by the Executive Magistrate. As such, his statement

recorded at the Sassoon Hospital, Pune cannot be dying declaration. The learned counsel further argued that except the interested statements of Ayesha and Minaz, there is no evidence to connect the applicant in the crime in question.

2. The learned APP opposed the application.

3. Perused the charge-sheet. The incident in question occurred in the intervening night between 5<sup>th</sup> February, 2015 and 6<sup>th</sup> February, 2015. The crime in question came to be registered on statement of Jahangir Mulani recorded at Sassoon Hospital. During the medical treatment, Jahangir succumbed to his burn injuries as seen from the post mortem report of his dead body. Apart from Jahangir, his son Roshan also died because of sustaining burn injuries.

4. It is the case of the prosecution that the present applicant is serving in Army and he is real brother of Jahangir Mulani (since deceased). The applicant had returned to his village by taking leave and there used to be quarrel between the applicant and Jahangir as the applicant used to demand one acre more land in family partition.

5. Statement of Jahangir Mulani recorded at the Burns Ward at Sassoon Hospital, Pune shows that in the night at about 2.45 a.m., his wife woke him up by saying that somebody has set their house ablaze by pouring kerosene from the window. Jahangir Mulani, therefore, attempted to save his family members by taking them out of the house. In that process, as stated by Jahangir Mulani, present applicant Shaukat poured kerosene on the face of his son Roshan Mulani. Both Jahangir Mulani and Roshan Mulani suffered burn injuries and ultimately succumbed to the burn injuries.

6. Statement of Jahangir Mulani is stating the circumstances of the transaction which has resulted in his death and as such, as per the provision of section 32 of the Evidence Act, 1872, the same is nothing but dying declaration of Jahangir Mulani. The same is corroborated by the spot panchanama as well as versions of Ayesha Mulani - wife of Jahangir Mulani and Minaz Mulani - daughter of Jahangir Mulani.

7. Considering the circumstances under which the

crime in question is committed, the nature as well as the gravity of the offence, no case for bail is made out. Hence the application is rejected.

8. In view of the disposal of the main application, Criminal Applications, if any, are disposed of accordingly.

**(A.M.BADAR, J.)**