

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1181 OF 2016

Ganesh Shripati Kamble

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Prashant M. Patil Advocate for Applicant.

Mr. S. H. Yadav APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 22, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 16/09/2015 in crime no. 186 of 2015 registered at Rajgad Police Station. Applicant is charge-sheeted for offence punishable under section 302 of the Indian Penal Code. Charge-sheet is filed on 18/11/2015.

2) It is the case of the prosecution that on 31/08/2015, wife of the present Applicant was admitted in the hospital with history of burn injuries. At the time of admission, she had informed the police as well as the doctor that she had sustained accidental burns while she was cooking, since the stove had

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blasted. Applicant was taking treatment in the hospital. On 15/09/2015, the statement of the wife of the Applicant was recorded. The statement was recorded by PSI of Rajgad Police Station. It is alleged in the said statement that on 31/10/2015, at about 8.30 p.m., Applicant had asked his wife to give her cellphone. She refused to give. There was a verbal altercation between the husband and wife. At that time, Applicant, being enraged with the refusal, had poured the diesel from the stove on the person of his wife. The allegations is that he had asked her to pose with the stove. She refused to oblige. He threatened her to set her ablaze and therefore, she posed before him with the stove. He had clicked the photograph of the victim in her cellphone and soon thereafter, he had ignited a matchstick and thrown it on her person, due to which she sustained injuries.

3) It is also alleged that the present Applicant had extinguished the flames by pouring water on her person. That the Applicant had taken her to the hospital and on the way to the hospital, had threatened her of dire consequences, if she would tell the truth and therefore, she had disclosed that she had sustained accidental burns. Wife of the Applicant had succumbed to the burn injuries on 19/09/2015. It is a matter of record that the statement is

not recorded by the Executive Magistrate, although the victim had survived for 20 days after the incident.

4) Perused the records. Investigating Officer had recorded the statements of the neighbours of the victim. All the neighbours had categorically stated that they had seen the victim, when she rushed out of her house with burn injuries. Upon enquiry by the neighbours, she had disclosed that she had sustained accidental burns while cooking. The same history was given before the doctor at the time of admission. *Prima facie* it appears that there are two inconsistent dying declarations. The first statement was history of accidental burns and after 15 days, the alleged F.I.R. was recorded. The copy of the statement on the basis of which crime is registered indicates that the statement was read over to the victim by her mother as it was recorded in the presence of her mother.

5) The learned counsel for the Applicant submits that in the given circumstances, *prima facie*, it cannot be said that the statement is voluntary as possibility of tutoring cannot be ruled out.

6) Taking into consideration the inconsistency between the statements of the victim, Applicant would be entitled to be enlarged on bail. It is made clear

that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973. The said observations shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall mark his presence before the concerned police station on every Sunday, between 10.00 a.m. to 12.00 noon till the framing of the charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)