

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1269 OF 2015

Mahadev Sadharam Thamke ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Pankaj D. Kavale, Advocate for the applicant.
Mrs. P.P. Shinde, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th April, 2016.**

P.C.:

This Application is moved for bail, as the applicant/accused is facing prosecution under sections 302, 307, 498A r/w. 34 of the Indian Penal Code. The offence is registered at the instance of father Vithoba Bhagoji Hule on 16th June, 2014 for the murder of his daughter at C.R. No. I-238 of 2014 at Naupada Police Station.

2. It is the case of the prosecution that deceased Surekha got married to the applicant/accused in 2007. After marriage, she started residing with her husband. A daughter was born out of this wedlock. However, the applicant/accused got addicted to liquor and, therefore, he used to pick up quarrels with her, abuse and assault her. He used to suspect her character and torture her. The applicant/accused took away his daughter on 21st May, 2014 to his village at Bise and did not bring her till 16th June, 2014, therefore, there was a quarrel between husband and wife. On 16th June,

2014 at around 9.30 a.m., Kiran, brother of Surekha received phone call from Surekha that applicant/accused and his two cousins Vinod and Sunil, who are co-accused in this case, assaulted her and thereafter on the same day, at 11.30 a.m. they received message that Surekha came out of the house in a burning condition and she was shifted to Civil Hospital for medical treatment. So, the complainant-father rushed to Civil Hospital and met Surekha. On enquiry, Surekha told her father that her husband, i.e., applicant/accused, brother-in-laws Vinod and Sunil assaulted her, poured kerosene on her and set her on fire, then she rescued and ran out of the house. The neighbours extinguished the fire and brought her to Civil hospital. Surekha succumbed to injuries on 17th June, 2014. The applicant/accused was arrested on 20th June, 2014. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that co-accused are granted bail by the learned Sessions Judge, therefore, he prays bail on the ground of parity. The learned counsel further submitted that the applicant/accused and other two accused persons have attended a meeting at Zilla Parishad office and he was not present in the morning when the alleged incident has taken place. He claims alibi. He further relies on the order passed by the Division Bench of this Court in Writ Petition No. 2689 of 2015 on 2nd April, 2016. He submitted that the papers

of attendance of the applicant/accused are suppressed by the Investigating officer and therefore, the applicant/accused has filed Writ Petition before the Division Bench wherein the order in favour of the applicant/accused is passed. He further submitted that the applicant/accused is innocent and has not committed any offence.

4. Learned APP opposed the Application. She relied on the FIR and two dying declarations of the deceased Surekha.

5. Perused the FIR, two dying declarations of the deceased, statements of the neighbours, who extinguished the fire and took Surekha to the hospital for medical treatment. The statements of neighbours, who met Surekha immediately after the incident when she was burning and extinguished the fire, show that there is immediate disclosure by Surekha wherein she has specifically stated that her husband came at 9.30 in the morning and fought with her and assaulted her. His two cousins were with him. The applicant abused her on the ground of her character and poured kerosene on her and set her on fire. In her statement before the father and two dying declarations which were recorded by the authorities, she maintained the same stand. It transpires from the postmortem report that Surekha died due to hypovolemic shock due to 91% superficial to deep burn injury. Considering these circumstances and the statements of

witnesses, *prima facie* I am of the view that there is no case for the applicant/accused to grant bail. The ground of parity is not available to the applicant/accused, as the role attributed to the applicant/accused is more than other two accused.

6. Perused the order dated 2nd April, 2016 passed by the Division Bench of this Court in Writ Petition No. 2689 of 2015. The Division Bench in paragraph 2 has ordered as follows:

“In the facts, the petitioner may resort to appropriate alternate remedy as permissible in law. All issues on merits are kept open. With aforesaid observations, Petition is disposed of.”

I am of the view that no order is made in favour of the applicant/accused in this petition. Hence, the Bail Application is rejected.

(MRIDULA BHATKAR, J.)