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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1643 OF 2016

Rashtrapal Anand Dhabe	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Ashok D. Raut for the applicant.

Mr.Deepak Thakre, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 12TH AUGUST, 2016

P.C. :-

1. The applicant / accused in Crime No.5/2016 for the offences punishable under section 302 and 307 of the Indian Penal Code registered with the Indira Nagar Police station, Nashik, by this application is praying for releasing him on bail after filing of the charge-sheet.

2. Heard the learned counsel for the applicant. He argued that deceased Rama has made several dying declarations which are inconsistent in material particulars and, therefore, after filing of the charge-sheet, pre-trial

detention of the applicant is not warranted.

3. The learned APP opposed the applicant by contending that statements of Rama recorded by the police officer so also her oral dying declaration consistently show that the present applicant set her on fire. By pointing out statement of the parental relatives of Rama, the learned APP contended that the applicant, who is husband of the deceased had motive to commit the murder of Rama.

4. Perused the charge-sheet including the F.I.R. lodged by Vasant Govinda Bansod on 9th January, 2016. The incident of sustaining burns by Rama Rashtrapal Dhabe occurred on 7th January, 2016 at her matrimonial house. She died due to burn injuries while taking treatment at Civil Hospital, Nashik. Her death is due to burns.

5. The case of the prosecution is based on dying declarations, oral as well as written, made by deceased Rama. It is well settled that in case of plural dying declarations, those should be consistent with each other in material particulars. Though it is said that a dying person does not speak a lie

but there is no initial presumption that dying declaration contains the truth and nothing but the truth. Maker of the dying declaration is not available for cross-examination by the accused and as such, unless and until it is shown that the dying declaration is trustworthy, reliable and truthful so also at the time of making such statement, the declarant was conscious and well oriented, the dying declaration cannot be made the basis for conviction. Keeping in mind this principles, let us see whether there is prima facie evidence to connect the applicant to the offence punishable under section 302 of the Indian Penal Code.

6. Deceased Rama was residing with the present applicant at Kavthekar Wadi, near Pandav Caves, Pathardi Phata, Nashik. Soon after sustaining burns by her, Sandeep Deepke and Mehboob Shaikh rushed to the spot of the incident. In the autorickshaw of Mehboob, Rama was taken to the Civil Hospital by the present applicant as well as witness Sandeep Deepke. Statements of Mehboob and Sandeep reflect the first oral dying declaration of deceased Rama. Rama made declaration before them that for cooking she was igniting stove and it flared and she caught fire.

7. Rama was then admitted to the Civil Hospital, Nashik. Thereafter, on 8th January, 2016, her dying declaration came to be recorded by the police Sub-inspector of Indira Nagar Police Station after obtaining the certificate of the doctor regarding her mental state. In this initially recorded dying declaration Rama has stated that while she was igniting a stove, it flared and her sari caught fire causing burns to her. On the very same day, her second dying declaration came to be recorded by the Executive Magistrate after getting certificate from the doctor that she is conscious and oriented to the place and time. This second officially recorded dying declaration of Rama is reflecting sustaining of accidental burns by her because of flaring of the stove.

8. Thereafter, it appears that as uncle of Rama had lodged report against the present applicant on 9th January, 2016, there was an attempt to record her dying declaration again by the Executive Magistrate. This attempt was made at about 4.45 p.m. on 9th January, 2016. At that time, the Medical Officer of the Civil Hospital certified that Rama is unable to make a statement. Therefore, the Executive Magistrate after

writing her answers to initial questions recording her name and understanding of Marathi language left remaining portions of the dying declaration blank. Then at about 7.10 p.m. the Medical Officer certified Rama to be conscious and the Police Sub-inspector of Indira Nagar Police Station recorded her supplementary statement. In this officially recorded dying declaration at about 7.10 p.m. on 9th January, 2016 Rama disclosed that she poured diesel from a can on her person and thereafter, her husband i.e. the present applicant set her on fire. This official dying declaration is in tune with the alleged oral dying declaration made by Rama on 9th January, 2016 to her uncle / informant Vasant Bansod, so also her oral dying declarations made to her mother Chhaya and father Bharat on 10th January, 2016. How Rama who was not in a position to make a statement at about 4.45 p.m. of 9th January, 2016 became conscious and fit to give statement at 7.10 p.m. on that day, is a question which will have to be answered in the trial after cross-examination of the Medical Officer.

9. Suffice to state that in this case of plural dying declarations, one set of oral as well as officially recorded

dying declarations points out accidental death whereas another set points out homicidal death of Rama at the instance of the present applicant. As such, both these sets of dying declaration are totally divergent and inconsistent on material particulars. With this evidence, the liberty of the applicant needs to be restored to him as the trial will take its own time. No apprehension is expressed by the prosecution that in the event of release of the applicant, he will not be available for trial. Therefore, the order :-

- (i) The application is allowed;
- (ii) The applicant / accused in Crime No.5/2016 for the offences punishable under section 302 and 307 of the Indian Penal Code registered with the Indira Nagar Police station, Nashik, be released on bail on his executing P.R. bond in the sum of Rs.15,000/- with one or more surety in the like amount;
- (iii) As a condition of this order, the applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of

accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;

- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)