

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

**CRIMINAL BAIL APPLICATION NO. 1837 OF 2016**

Rama @ Ramchand Shankar Waghmare. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

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Mr. Satyavrat Joshi, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

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**CORAM : SMT. SADHANA S. JADHAV,J  
DATE : NOVEMBER 22, 2016**

**P.C.:**

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 7/5/2015 in Crime No. 61 of 2015 registered at Walchand Nagar Police Station, district- Pune initially for offence under section 498A, 307 read with section 34 of the Indian Penal Code. The injured succumbed to the

injuries and hence, section 302 of the Indian Penal Code was added. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 7/5/2015 the daughter-in-law of the present applicant was admitted in the Silver Jubilee Hospital with history of burn injuries. It appeared to be a medico legal case. Hence, her statement was recorded by the police. She has disclosed to the police that at about 4 p.m. she was igniting the stove for cooking food and at that time, the stove had blasted and stove got fire and she had sustained accidental burn injuries. She has stated that her mother and her husband had admitted her in the hospital for treatment. That on 8/5/2015, the statement of the injured was again recorded by PSI of Walchandnagar Police Station in which she has disclosed to the police that she was married to the son of the applicant on 19/2/2014 and that she was being harassed by her husband and in-laws on the ground that she had not fetched sufficient gifts at the time of marriage. They had also levelled allegations on her character and that she had disclosed the same to

her parents. She has further stated that on 7/5/2015, she had been to the common water tap for filling water. At that time, her father in law i.e. the present applicant had asked her as to why she is filling water and that he would fill water himself. She felt humiliated as he has passed remark in front of the other ladies. They both returned home. Thereafter, father-in-law i.e. the present applicant asked her to serve food. She did not serve food. Thereafter, he had taken the food on his own and cleaned the room. After some time, he had entered into the house and poured kerosene on her and thereafter, ignited match stick. She ran out of the house for extinguishing flames and was rescued by the neighbour who had taken her to the hospital.

4 On 10/5/2015 once again statement of the injured was recorded in which she reiterated that the present applicant had set her ablaze. She had clarified that at the time of recording of first statement, the present applicant was present and therefore, she had disclosed that she had sustained accidental burns.

5 The learned Counsel for the applicant submits that the statement recorded on 10/5/2015 appears to be a tutored statement only for the purpose of giving clarification and filling the lacunas of inconsistent dying declaration recorded on 7/5/2015 and 8/5/2015. It is further rightly submitted that despite the fact that the investigating officer has recorded three statements, no attempt was made to get the statement recorded by Executive Magistrate. It is further submitted on the basis of the record that it was the applicant who had admitted her in hospital as is seen from the medical records.

6 As against this, the learned APP submits that there are statements of the neighbour which shows that while in transit to the hospital the deceased had referred to the applicant by saying that he has done injustice to her. Upon reading statement dated 8/5/2015 it is clear that no prelude is mentioned. The deceased neither says that the applicant was annoyed with her since she did not serve food.

7 Be that as it may, the applicant's case rests on inconsistent dying declaration and the voluntariness and truthfulness of the statement need to be proved by the substantial evidence at the time of trial.

8 In view of the above observations and the fact that the applicant has been in jail for almost 15 months, the applicant deserves to be enlarged on bail.

9 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

10 Hence, following order is passed :

**ORDER**

(i) The application is allowed.

- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more sureties in the like amount.
- (iii) The applicant shall report to the concerned police station as and when called by the investigating officer and cooperate with the investigating agency to the best of his capacity.
- (iv) The applicant shall not tamper with the evidence.

11 The application is disposed of accordingly.

**(SMT. SADHANA S. JADHAV,J)**