

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

**CRIMINAL APPLICATION NO.1220 OF 2015
IN
CRIMINAL APPEAL NO.966 OF 2015**

Haridas Raosaheb Bedare ...Applicant.

Versus

The State of Maharashtra ...Respondent

Mr. Jaydeep Mane for the Applicant.
Smt. V.R. Bhonsale, APP for the Respondent -State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 31st March, 2016.

ORAL ORDER [PER SMT. V.K. TAHILRAMANI, J.]:

The Applicant has been convicted under section 302 and 498 A of the IPC. The Applicant is now seeking bail. It is the prosecution case that the Applicant set Namrata on fire. There are two dying declarations on record. One dying declaration was recorded by police constable Mr. Vyawhare and other dying declaration was recorded by PW 2, Special Magistrate, Mr. Yusuf Babulal Khan. In both the dying declaration Namrata has stated that the Applicant set her on fire. In addition there is an oral dying declaration made to PW8 Prabhakar Bhosale, who is the father of

Namrata. Namrata told Prabhakar Bhosale that her husband had set her on fire.

2. The learned counsel for the Applicant has submitted that the dying declaration recorded by PW-2 Special Magistrate, Mr. Yusuf Khan and dying declaration recorded by PW-4 police constable Vyawhare both showed time of 11.30 p.m. He submitted that it is not possible that both the dying declaration could have been recorded at the same time. In this connection we would like to refer to evidence of PW4 police constable Vyawhare. He has categorically stated that while he was recording the statement of the patient even Special Magistrate, Shri Yusuf Khan was also recording the statement as per the narration made by the patient Namrata. Thus, it is seen that both the dying declarations are recorded at the same time. PW-2 Special Magistrate Mr. Yusuf Khan has also stated that he and police constable Mr. Vyawhare (PW-4) were recording the statement of Namrata at the same time. It is in these circumstances that both the dying declarations recorded time of 11.30 p.m. Thus, we do not find any merit in the contention.

3. Thereafter it was submitted by Mr. Mane that the oral dying declaration made by Namrata to PW-8 Prabhakar Bhosale is inconsistent with the dying declaration recorded by PW-2 and PW-

4. He has submitted that in such case the entire prosecution is to be disbelieved. We have carefully gone through the evidence of PW8 Prabhakar Bhosale and we found that there is nothing inconsistent between his version and the two dying declarations recorded by PW-2 and PW-4. Thus we find no substance in this submission.

4. Thereafter it was submitted by the learned counsel for the Applicant that the evidence of PW-9 API Tanpure, shows that the first information, which was received from the hospital was that burn injuries were caused on account of accidental flaring of stove. Mr. Jaydeep Mane also relying on the evidence of PW-4 has stated that it is mentioned in the Yadi that the patient sustained burn injuries due to flaring of stove while cooking. However, the evidence of this witness i.e. PW-4 police constable, Vyawhare shows that Namrata was admitted in the hospital by Dattatraya Bedare, i.e. brother of the Applicant. It is nowhere on record that the patient herself has given this history of accidental burns due to flaring of stove. Thus, it becomes clear that this history is given by the brother of the Applicant. The brother of the Applicant is bound to shield his brother and therefore he has given history of accidental burns.

5. Lastly, it was argued that the Namrata was educated upto 10th standard hence, she would know how to sign, yet on both the dying declarations thumb impression of Namrata has been taken. This fact by itself in our opinion would not be sufficient to discard both the dying declarations.

6. Looking to the evidence on record, we are not inclined to grant bail, hence, the application is rejected.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)