

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

CRIMINAL BAIL APPLICATION NO. 2162 OF 2016

Sampya @ Sampat Balu Pawar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. P.G. Sarda, advocate for Applicant.

Mr. Rajan Salvi, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 16, 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 22/5/2016 in Crime No. 287 of 2016 registered at Baramati City Police Station on 22/5/2016 initially for offence punishable under section 307 read with section 34 of the Indian Penal Code. The first informant i.e. the injured

has succumbed to the burn injuries on 5/6/2016 and thereafter section 302 of the Indian Penal Code was added.

3 It is the case of the prosecution that on 22/5/2016 Shilpa was admitted in Silver Jubilee Hospital, Baramati with history of burn injuries. Since it was a medico legal case, her statement was recorded by lady police officer. She disclosed to the police that on 22/5/2016 in the afternoon at about 3 p.m. she was sleeping in her house and at that time her husband Hemant Pawar and other members of the family had come to home. They woke her up and asked her to bring Rs. 22,000/-, as they were to give the same to Sindya Pawar. That she had refused to oblige them. Being enraged by the said denial, her husband had poured kerosene on her person and when she was resisting, the present applicant, his wife and others had caught hold of her and facilitated her husband to set her ablaze. On 24/5/2016 a supplementary statement was recorded and she had reiterated the allegations levelled against the applicant on 22/5/2016.

4 On the date of the incident, soonafter registration of FIR, the statement of Sharad Kale i.e. the father of the Roshna was recorded and he has informed that his daughter Roshna had been to the house of his sister Shilpa. At about 4 p.m., Roshna came home and informed him that her aunt Shilpa was set ablaze by her uncle i.e. by the husband of Shilpa. They all rushed there and saw that she had sustained burn injuries and was admitted in Government Hospital. According to Sharad Kale, statement of Shilpa was recorded by Executive Magistrate. However, compilation of charge-sheet does not show any such statement. It is a matter of record that Shilpa was discharged from the hospital on 27/5/2016 and had succumbed to the injuries on 5/6/2016. The cause of death is septicemia due to burn.

5 It is true that the case rests on the dying declarations which are consistent. The applicant herein happens to be the father-in-law of deceased Shilpa. The cause title shows that the applicant is 75 years old. The compilation of the charge-sheet shows that the applicant is about 75 years old. He has been in jail for more than 4 months. By

virtue of the proviso to section 437 of the Code of Criminal Procedure, 1973, the applicant would be entitled to be enlarged on bail.

6 Proviso to Section 437 of the Code of Criminal Procedure, 1973 reads as under :

Provided that the Court may direct that a person referred to in clause (i) or clause(ii) be released on bail if such person is under the age of sixteen years or is a women or is sick or infirm:

7 The co-accused shall not claim parity with the present applicant as he has been enlarged on bail by virtue of the proviso to section 437 of the Code of Criminal Procedure, 1973.

8 The learned APP submits that the applicant does not have definite place of residence and it is doubtful as to whether he would be available to face trial. That stringent conditions can be imposed upon the applicant in that eventuality.

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 solvent sureties in the like amount.
 - (iii) The applicant shall report to Baramati City Police station on 1st Sunday of each month till framing of charge.
 - (iv) The applicant shall not tamper with the evidence.
- 11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)