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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2372 OF 2015

Sudhir Subhash Kale ..Applicant.

V/s.

State of Maharashtra ..Respondent.

CRIMINAL BAIL APPLICATION NO.2376 OF 2015

Anil Jafar @ Zirpya Kale ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Bhushan V.Mahadik for applicants in both applications.

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

CORAM : A.M.BADAR, J.

DATED : 20TH JUNE, 2016

P.C. :-

1. Applicants / accused in Crime No.60/2012 for the offences punishable under sections 307, 143 read with 34 of the Indian Penal Code registered with Mohol Police Station, Solapur on 12th March, 2012 on the basis of statement of Manisha Bokya Kale (since deceased) by these applications are praying for releasing them on bail.

2. Heard the learned counsel for applicants. According to him, the medico-legal certificate dated 11th March, 2012 shows that Manisha Kale had suffered only 39 to 40% burn injuries and she was admitted at 5.30 p.m. in the Government Hospital though the incident allegedly happened in the morning hours. The learned counsel for the applicant attempted to show that the burn injuries on Manisha were self inflicted in order to take revenge on the applicant and other accused persons. For this purpose, he attempted to rely on the Session Case in which father of Manisha is charged for offence punishable under section 302 of the Indian Penal Code for committing murder of a relative of applicants. The learned counsel further argued that though in her statement Manisha alleged that Rokel (kerosene) from drum was used, in the spot panchanama, Can is shown to have been seized. He relied on the statement of witness Rekha and Mohrabai in order to show that rokel (kerosene) from chimney was allegedly used. Hence, according to the learned counsel, evidence of prosecution is shaky and inconsistent warranting release of applicants on bail.

3. I have also heard the learned APP who opposed the

bail applications.

4. Perusal of the post mortem report shows that Manisha Kale died because of burn injuries suffered by her. On her death, section 302 of the Indian Penal Code was added to the case diary of the crime in question. On death of Manisha Kale, her F.I.R. is admissible as her dying declaration reflecting her cause of death, as per the provision of section 32 of the Evidence Act. In her dying declaration given on 12th March, 2012 deceased Manisha has stated that accused Manisha Shinde and Shamal Kale caught hold of her legs and applicant / accused Sudhir held her hair and Anil Kale poured kerosene from the drum from her own house on her person and thereafter, accused Yunus ignited her by throwing a burnt match stick on her person causing burn injuries to her. It is thus clear that in her dying declaration, Manisha has categorically mentioned roles played by both applicants resulting in her death. Though it is attempted to show that these are self inflicted burn injuries, this is not stage where such conclusion can be recorded. It is a matter of common knowledge that in attempt to inflict injuries on ones own person, one may get more than what is bargained. As such,

prima facie, it cannot be said that a person indulges in self effacement by causing burn injuries to oneself in order to make a show for taking revenge.

5. Nomenclature of utensils used for storing kerosene is hardly any advantage considering the fact that the victim comes from a rustic background. Niceties for addressing utensils either as a drum or can is hardly expected. Rekha and Mohrabai are not eye witnesses to the incident in question and, therefore, their statements are of no use. In the result, no case is made out for bail. Hence the order :-

Both applications are rejected.

(A.M.BADAR, J.)