

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [BA] No.607 of 2016

(Ramrao @ Pintya @ Pramod s/o Wasudeo Dhokne
 vs.
 State of Maharashtra, through P.S.O. Channi, District Akola)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

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Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.
 Mrs. Mrunal Naik, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 2nd AUGUST, 2016.

Heard the learned Counsel for the applicant and the
 learned A.P.P. for the non-applicant/State.

The learned Counsel for the applicant submits that
 though there are two dying declarations made in this case by the
 deceased, a reasonable doubt about their reliability arises at this
 stage, as the first dying declaration recorded on 29/12/2015 is
 not accompanied by fitness certificate of the Doctor or the
 opinion given by the Doctor regarding the mental and physical
 condition of the deceased and that the case-history of the
 deceased, when she was admitted to the Government Hospital in
 the evening of 28/12/2015 and also the case-history recorded by
 the private hospital subsequent to the recording of the first dying
 declaration *prima facie* run contrary to what is stated in the
 dying declarations. He further submits that there is an

independent witness viz. Arun Bochara, who says that at the relevant time this applicant was standing outside the house and on hearing shouts from the house of the deceased, wherein the deceased had caught fire, this applicant went inside the house and extinguished fire of the deceased by wrapping a blanket around her person. He further submits that now the charge-sheet has been filed and the applicant being the only person available in his house to take care of his small daughters, one aged about 3 years and other about 13 months, this applicant deserves to be released on bail.

The learned A.P.P. for the State submits that at this stage itself, one can see that two dying declaration, which are consistent in nature, can be viewed to be *prima facie* made voluntarily and truthfully and these two dying declarations have disclosed *prima faice* involvement of the applicant in the offences registered against him. She submits that the second dying declaration is accompanied by the certificate of Doctor.

On going through the charge-sheet, I find that there is substance in the argument for the learned Counsel for the applicant that there is no material available on record explaining as to why the case-history of the deceased has been recorded in a manner, which is quite contrary to what is alleged in her two dying declarations. The first dying declaration is not supported by any certificate of the Doctor or satisfaction of the person, who

recorded it regarding fitness of the deceased to make the dying declaration. The second dying declaration has been recorded on 29/12/2015, subsequent to the first dying declaration recorded on the same day. These dying declarations had been recorded when the deceased was still in the Government Hospital. Thereafter, the deceased was shifted to private hospital. The case-history of the deceased recorded at the Government Hospital before the dying declarations were recorded and the case-history of the deceased that was recorded at the private hospital after the dying declarations were recorded, *prima facie* shows that the deceased was admitted to the hospitals as a case of accidental burns.

The statement of independent witness viz. Arun Bochare also indicates that possibility of accidental burns *prima facie* cannot be ruled out.

The applicant is having two daughters, one aged about three years and other aged about 13 months. There is no reason for me to not accept the contention raised on behalf of the applicant that there are no other family members to take care of two daughters of the applicant, who are of very tender age. The investigation is over with the charge-sheet having been filed earlier. In this situation, I am of the view that the applicant is entitled to be released on bail. Hence, the order.

The application is allowed and it is directed that the applicant be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- together with one solvent surety in the like sum on the conditions that (i) the applicant shall regularly attend the dates fixed by the Court, (ii) shall co-operate with the trial Court in expeditious disposal of the case and (iii) shall not tamper with the prosecution witnesses.

The application is disposed of in aforesaid terms.

JUDGE

**sdw*

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 02/08/2016