

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1825 OF 2017

1. Shaikh Aasef s/o. Shaikh Khalek .. Applicants
Age. 28 years, Occ. Tailor,
2. Shaikh Arbiya d/o. Shaikh Altaf Hussain
Age. 21 years, Occ. Household,

Both R/o. Maniyar Galli, Ambejogai,
Tq. Ambejogai, Dist. Beed.

Versus

The State of Maharashtra .. Respondent

Mr. Anil M. Gaikwad, Advocate for the applicants.
Mr. A. R. Borulkar, A.P.P. for respondent/State.

CORAM : T.V. NALAWADE, J.
DATED : 26.04.2017

P.C. :-

1. This application is filed for bail. Both the sides are heard. The statement is made that this is the first application filed for bail in this Court.
2. The crime is registered on the basis of report given by deceased Farhana. Applicant No.1 is husband of the deceased and applicant No.2 is second wife of applicant No.1. The allegations are made that four days prior to the day of incident, applicant No.1 brought applicant No.2 to the place where applicant No.1 was

cohabiting with the deceased and due to that the dispute started. Though the second marriage was taken place in the month of March, 2016, applicant No.2 was kept at other place by applicant No.1. The allegations are made that on the day of incident when the quarrel started, applicant No.2 poured kerosene on the person of the deceased and applicant No.1 set fire to her. The deceased disclosed that she had poured water on her own person to extinguish the fire and then she was taken to hospital at Ambajogai by her husband. She died due to burn injuries on 13.10.2016. During the course of investigation, statement of relatives and parents of the deceased are recorded and they are mainly on dying declarations of the deceased made to them in the hospital.

3. It appears that on 08.10.2016 at about 1.45 p.m. first dying declaration was recorded in which the deceased disclosed that due to accidental fire which started in the kitchen, she has sustained burn injuries. She has not referred applicant No.2 in the said disclosure. There are no statements of neighbours of applicant No.1 showing that he had brought applicant No.2 to the place where he was cohabiting with the deceased. It is the case of the mother of the deceased that only due to the threats given by applicant No.1, she disclosed that due to accidental fire, she has sustained burn

injuries.

4. If the aforesaid material is considered as it is, it can be said that for whatever happened, blame can be put on applicant No.1. There are no statements showing that applicant No.2 had started living in the same house where the deceased was living. The applicants have been behind the bar since 11.10.2016. In view of this circumstance, this Court holds that applicant No.2-Shaikh Arbiya can be granted bail. However, bail cannot be granted to applicant No.1-Shaikh Aasef as he was living with the deceased and he knows everything and possibility that he gave threats to make disclosure that it was accidental fire, cannot be ruled out. Further, he admittedly has married with second wife. The witnesses, to whom the dying declarations are given, are close relatives. Due to this circumstance, there is possibility of tampering with the prosecution witnesses. In view of this, bail cannot be granted to applicant No.1-Shaikh Aaser.

i. In the result the application of applicant No.1-Shaikh Aasef s/o. Shaikh Khalek is rejected.

ii. The application of applicant No.2-Shaikh Arbiya d/o. Shaikh Altaf Hussain is allowed. She be released on

bail in connection with Crime No.426 of 2016 registered with Ambejogai City Police Station, Dist. Beed, for the offences punishable under section 307, 498-A, 302 read with section 34 of the Indian Penal Code, on her furnishing PR & SB of Rs.15,000/- (Rupees Fifteen Thousand).

iii. Applicant No.2-Shaikh Arbiya is not to tamper with the prosecution witnesses and she is not to commit similar offence.

[T.V. NALAWADE, J.]