

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

**914 CRIMINAL APPLICATION NO. 2799 OF 2017
IN
CRIMINAL APEAL NO. 218 OF 2017**

VIJAY SHANTRARAM PATIL

V E R S U S

THE STATE OF MAHARASHTRA

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Mr. A.K.Bhosale, Advocate for Applicant.

Mr. G.O.Wattamwar, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 12th JULY, 2017

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ORDER :

1. The applicant has moved this application seeking suspension of sentence and release on bail during pendency of Appeal, for the reasons set out in detail in the application.

2. Heard learned counsel for the applicant and learned A.P.P. for the respondent – State. Perused

impugned Judgment and order passed by the trial Court as well as copies of the depositions placed on record by the learned counsel for the applicant.

3. The applicant was tried for committing offence punishable u/s 302,323,504 of the Indian Penal Code with allegations that on 23/11/2012 the applicant poured kerosene on the person of his wife Manisha and set her ablaze. She was admitted in the Govt. hospital, Aurangabad in burn condition. On receipt of intimation in respect of admission of Manisha in burn condition, P.S.I. Sagarsing Shivlal Rajput [P.W.4] visited the hospital and recorded her statement which was treated as F.I.R. and offence u/s 307 of the I.P.C. came to be registered. Subsequent thereto, dying declaration of the deceased was also recorded by Nutan Ramesh Aadasare [P.W.5], President of Women Vigilance Committee, Aurangabad. In both the dying declarations, deceased categorically stated that her husband had taken Rs. 7,000/- from her step brother Vijay Shantaram Patil which he has not returned and spent money on his habit of consuming liquor. On that account, there was some dispute. The applicant/accused poured kerosene on the person of deceased and set her ablaze. The deceased succumbed to

the injuries on the next day of the incident. After the death of the deceased, offence u/s 302 of the Indian Penal Code was applied in the case, further investigation was conducted and charge sheet was filed.

4. On conclusion of trial, the applicant is held guilty of the offence punishable u/s 304-I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of Ten years and to pay fine of Rs. 3,000/-. Being aggrieved, the applicant has preferred Appeal and during pendency of Appeal, urged to release him on bail.

5. Mr. Bhosale, learned counsel for the applicant strenuously contended that the reasons and findings recorded by the trial Court are not sustainable in law. He submits that the applicant has good case to succeed in the Appeal. The conviction of the appellant is mainly based upon the dying declarations allegedly recorded by P.S.I. Rajput and one social worker. He submits that there are number of circumstances brought on record which raises serious doubt as to recording of such dying declarations in the manner stated by the witnesses. He further submits that two other witnesses examined by the prosecution i.e. P.W.2 and P.W.3 though supported the case of prosecution

as to oral dying declaration made to them by deceased, their testimonies can not be given much weightage as they are highly interested persons. It is contended that the oral dying declaration recorded by Nutan Aadasare [P.W.5] found to be missing and xerox copy of the said dying declaration which was tendered in evidence as secondary evidence relied by trial Court. He submits that the applicant is falsely implicated in the case at the instance of step brother of the deceased who was on cross terms with the applicant. It is contended that as the applicant too received burn injuries to the extent of 15 to 20 % in the incident trial Court ought to have accepted the defence of the applicant that he sustained injury while attempted to extinguish the flames on the body of the deceased who poured kerosene and set herself ablaze. It is further contended that since more than 4 ½ years the applicant is lying in jail and urge to release the applicant on bail.

6. On the other hand, learned A.P.P. opposed the application and contended that there is cogent, convincing and reliable evidence to sustain the conviction. He submits that beside two oral dying declarations, there are two written dying declarations which are consistent. He

submits that there are no circumstances to raise doubt as to the genuineness of the dying declarations recorded by the police officer and the social worker. He further submits that looking to the nature of offence and sentence awarded, the applicant may not be enlarged on bail.

7. In order to appreciate the rival submissions, I have perused the impugned Judgment and order as well as copies of depositions placed on record. I am of the prima facie opinion that there is sufficient evidence to sustain the conviction. While taking deceased in ambulance from her home to hospital, she made oral dying declaration to Pravin Dharma Patil [P.W.2] and Vijay Shantaram Patil [P.W. 3]. The dying declarations made to them found to be consistent with each other. Pravin Dharma Patil [P.W.2] can not be said to be interested witness. Beside oral dying declaration made to P.W.2 and P.W.3, there are two written dying declarations. All the dying declarations were recorded on the same day and the material facts stated therein as to the cause relating to the death of the deceased appears to be consistent with each other. No doubt, the applicant has sustained burn injuries and he was also treated in the same hospital. Only for the

reason that the applicant had sustained burn itself can not be treated as circumstance to believe that the deceased committed suicide and in a process to save her the accused sustained injury. The possibility can not be ruled out that such injuries might have been sustained while setting ablaze the deceased. Thus, on due consideration of over-all evidence, the nature of offence and the sentence awarded, I am of the view that no case is made out to entertain the application. I am, therefore, not inclined to allow the application. The application is rejected. However, in view of the fact that the applicant is lying in jail as under-trial prisoner since more than four years, I am inclined to expedite the hearing of the Appeal. Hence, I pass the following order.

ORDER

[i] The application is rejected.

[ii] The Sessions Judge, Aurangabad is directed to expedite the work of preparation of paper books and submit record and proceedings with paper books within twelve weeks from the date of communication of the order.

[iii] On receipt of record and proceedings with paper book, the applicant will be at liberty to move the Court to list the Appeal for final hearing.

[V.L.ACHLIYA, J.]

KNP/Cr.Apln. 2799.2017 in Cr. Appeal 218.2017