

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

CRIMINAL APPLICATION NO. 2859 OF 2017

Shankar Daga Suryawanshi
and another

... Applicants

VERSUS

The State of Maharashtra

... Respondent

.....

Mr. R.S.Kulkarni, advocate for the applicants

Mr. S.B.Joshi, A.P.P for respondent

.....

CORAM : K.L.WADANE, J.

DATED : 28th JUNE, 2017

O R D E R :

Heard Mrs. Kulkarni, learned counsel for the applicants and Mr. Joshi, learned A.P.P. for respondent.

2. This is an application in connection with Crime No. 51 of 2017, registered at Mohadi police station, District Dhule, for the offences punishable under Sections 302, 307, 323, 504, 506 r/w 34 of the Indian Penal Code.

3. The dying declaration of deceased Anita was recorded in the Civil Hospital, Dhule on 24.5.2017, in which she alleged that when on 22.5.2017 she went to her in-laws house at Sharmanagar, Chitod Road, Dhule, the present applicants no.1 Shankar and No.2 Sagar along with other accused persons namely, Sushila, Yogita and Jyoti picked up quarrel with the deceased on domestic reason and they assaulted her. Thereafter, deceased, her husband and son returned to Dandewalababanagar, Ambedkar Wasahat at Dhule. On 23.5.2017 at 9.00 p.m. there was quarrel with her husband on domestic reason. Her husband abused her. He poured kerosene on her person and pushed her on a gas, due to which the clothes on the person of deceased caught fire. Her second dying declaration was recorded on the same day by the Executive Magistrate, Dhule, before whom she has repeated the same thing which she had already stated in the first dying declaration.

4. Looking to the contents of both the dying declarations, it appears that there are allegations against the present applicant of assault, however, there is no evidence to show that some injuries were received by the present applicants. The deceased sustained 100 per cent burn injuries. There are no allegations against any of the applicants that they were present on the spot, that they have participated actually while committing the offence or they have abetted the husband of the deceased to commit the crime.

5. Therefore, looking to the nature of allegations of assault only against the present applicants, at the most offence under Section 323 of the Indian Penal Code could be made out.

6. The above said observations are made at a primary stage of litigation and it has no bearing at the time of conclusion of trial. Hence following order.

7. Considering the nature of allegations, I am of the opinion that custodial interrogation of

the present applicants is not necessary.

8. Hence, the following order.

Interim relief granted by this Court by its order dated 13.6.2017 is hereby made absolute.

9. Criminal Application is disposed of.

(K.L.WADANE, J.)

dbm