

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

DISTRICT : AHMEDNAGAR

15 CRIMINAL APPLICATION NO. 5178 OF 2017

DEEPALI DADA MAPARI

VERSUS

THE STATE OF MAHARASHTRA

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Mr. R.N.Dhorde, Senior Counsel i/b

Mr. V.R.Dhorde, Advocate for Applicant.

Mr. A.D.Namde, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 4th DECEMBER, 2017

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ORAL ORDER :

1. The applicant/original accused No. 4 lying arrested in connection with the offences registered u/s 143,147,149,302 of the Indian Penal Code and u/s 3 (1) (x) and 3 (2) (v) of the Scheduled Castes and the

Scheduled Tribes [Prevention of Atrocities] Act, 1989 vide Crime No. I-99/2011 at Belwandi police station, District Ahmednagar preferred this application seeking release on bail on the grounds mentioned in detail in the application.

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

3. Mr. R.N.Dhorde, learned Senior Counsel appearing for the applicant contended that the entire case of the prosecution is based upon the dying declaration of the deceased. Learned counsel submits that in the alleged dying declaration no overt act is attributed to the applicant. He submits that the incident was occurred in August, 2011. The applicant was arrested on 07/07/2017 after five years after registration of offence and that too after rejection of application for anticipatory bail filed by the applicant and co-accused. The investigation is already completed and charge sheet has been filed against accused. The applicant is young lady of 27 years of age having two small children. The entire family of the applicant is behind bars. He submits that there is no

legally sustainable evidence to prima facie establish the complicity of the applicant in commission of the offence. On the basis of vague allegations in the F.I.R. that the applicant was accompanied with the co-accused, the applicant is charge sheeted. It is further pointed out that son of the deceased and other witnesses who have rushed to the house, where deceased found to have sustained burn injury none of them have seen the applicant or any accused person running and or coming out of said house. They disclosed nothing to establish the complicity of the applicant in commission of the offence. In this background, learned counsel submits that the applicant deserves to be enlarged on bail.

4. On the other hand, learned A.P.P. opposed the application with the contention that in the dying declaration, the deceased has mentioned that all the four accused came to her house. Learned A.P.P. fairly conceded that no overt act is attributed to the applicant in commission of the offence of setting the deceased on fire.

5. In order to appreciate the submissions advanced, I have perused charge sheet. The offence in

question was committed on 08/08/2011. On 07/08/2011, deceased Janabai was admitted in hospital with burn injuries. While she was admitted in hospital, her dying declaration was recorded. She stated that since last ten years i.e. after the death of her husband, she was residing in the house located adjoining to the house of his son. Her son, his wife and children residing in the adjoining house. Father-in-law of the applicant namely Akash Shankar Mapari used to illtreat her. There was a dispute between her family and Akash Mapari. Dada Mapari, his mother, wife and uncle came to the house along with 20 to 25 persons and enquired about her son-in-law. She was assaulted by those persons. She further alleged that the mother-in-law of the present applicant pushed her on the ground and Dada Mapari, the husband of the applicant poured kerosene on her person and set her ablazed. Subsequent to recording of dying declaration, the deceased succumbed to burn injury. Her dying declaration was treated as F.I.R. and on the basis of said report, the aforesaid offence came to be registered on 08/08/2011 vide Crime No. 99/2011. After the period of about more than six to seven years of registration of offence, the applicant and co-accused have been arrested.

6. Thus, if we consider the case of the prosecution, it is mainly based upon the dying declaration of the deceased. If the allegations made in the dying declaration are taken into consideration, then the role attributed to the applicant in commission of the offence is confined to accompanying the co-accused while they visited the house of deceased and set her on fire. The role of pouring kerosene and setting on fire is attributed to the husband of the applicant and further overt act have been attributed to accused No. 1 Dada Mapari, mother-in-law and uncle of accused No. 1. If we consider the other statements of witnesses which includes the close relatives of the deceased, who had taken deceased to hospital, then none of them seen the applicant coming out of the house. The applicant is not resident of same village. The incident was occurred in day time. Thus, considering the over-all evidence in the case, I am of the view that the applicant deserves to be enlarged on bail. The investigation is already completed. The incident occurred way-back in the year 2011. Since the prosecution case is mainly based upon the dying declaration of deceased, there is no question of tampering of prosecution witnesses by the applicant, if released on bail. So far as the apprehension of the prosecution that the applicant may abscond, same

can be addressed by putting certain stringent conditions. The applicant is woman having two children. The entire family is behind bars. I am, therefore, inclined to allow the application

7. It is clarified that the observations as made above are made for limited purpose of deciding the present application. None of the observation made above be treated as observation made as to merit of the case of prosecution against the applicant.

8. In the result, following order is passed.

ORDER

1. The application is allowed.
2. The applicant Deepali Dada Mapari lying arrested in Crime No. I-99/2011 registered at Belwandi police station, District Ahmednagar for the offences punishable u/s 143,147,149,302 of the Indian Penal Code and u/s 3 (1) (x) and 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities]

Act, 1989 be released on bail on furnishing bail in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand] with one surety in like amount on following conditions.

[i] The applicant shall not tamper the prosecution witnesses.

[ii] The applicant shall appear and record her appearance before the Officer in-charge of Belwandi police station, District Ahmednagar on last day of each month between 10.00 a.m. to 11.00 a.m. till conclusion of trial.

[iii] The applicant shall not indulge in the offences of similar in nature.

[iv] The applicant shall furnish the names and address of her three close relatives with their phone numbers.

3. In the event of breach of any of the above mentioned condition, the bail granted to the applicant is liable to be cancelled.

4. Bail to be furnished before the trial Court.
5. The application is disposed of in above terms.

[V.L.ACHLIYA, J.]

KNP/Cr. Apln. 5178.2017