

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 612 OF 2016

Kisan Narayan Sonar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Mallika Ingale i/b Mr. Sunil N. Gomase Advocate for Applicant.
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 2nd FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 18/07/2015 in crime no. 498 of 2015 registered at Virar Police Station on 18/07/2015. Investigation is completed and charge-sheet is filed on 09/10/2015 against the applicant for offence punishable under sections 302, 304 (A) of the Indian Penal Code.

2) It is the case of the prosecution that on 22/06/2015, wife of present applicant was admitted in the hospital with history of burn injuries. On 23/06/2015, statement of the injured was recorded in the hospital. She has stated before the police that she got married to the present applicant sometime

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in 2013. The couple was blessed with one son. She has also disclosed that her husband is addicted to alcohol. According to her, on 22/06/2015, her husband had gone out for dinner with his friends and had returned home under the influence of alcohol. She got enraged with his addiction to alcohol and therefore, she poured kerosene on herself and set herself ablaze. Applicant had then extinguished the flames by pouring water on her and had rushed her to Sanjeevani Hospital. She was referred to Shatabdi Hospital where her statement was recorded.

3) On 25/06/2015, statement of the injured was recorded in question and answer form by P.S.I. of Bhoiwada Police Station and she had reiterated the reason for sustaining burn injuries. It appears that on 16/07/2015, statement of the injured was once again recorded by the Executive Magistrate and at that time, she had disclosed that on the day of incident when she was cooking food, her husband had set her stolle on fire and she sustained burn injuries. The injured succumbed to the burn injuries on 17/07/2015 and on 18/07/2015, brother of the injured lodged a report at the police station alleging therein that present applicant had subjected his sister to cruelty and ill-treatment and set her ablaze.

4) The learned counsel for the applicant rightly submits that there is non application of mind by the investigating agency and that the charge-sheet is filed under section 302 of the Indian Penal Code despite the fact that first two dying declarations clearly indicate that she had immolated herself.

5) As against this, the learned APP submits that brother of the applicant namely Pradeep had been to meet his sister in the hospital on 11/07/2015 and at that time, he had taken his sister into confidence and inquired with her and it was at that juncture that she had disclosed that she was set ablaze by her husband. The learned APP further submits that the disclosure statement made by the victim to the brother had been video graphed by him and on 16/07/2015, she has disclosed to the Executive Magistrate that she has sustained homicidal burns.

6) It appears that the said statement recorded by the Executive Magistrate was in all probabilities a tutored statement. It is pertinent to note that despite the fact that the injured had disclosed to her brother on 11/07/2015 that she had sustained homicidal burns at the hands of the present applicant, he had taken no steps to initiate prosecution against the present applicant and it was only after the demise of his sister that he had set criminal law into motion.

7) Taking into consideration the inconsistency in the dying declaration and the material on record, this Court is of the opinion that applicant deserves to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall report to the Virar police station on first Sunday of each month till framing of the charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)