

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 698 OF 2016

Akhtar Hussain Nazir Ahmed Shaikh ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr. Jaikumar H. Shiradhonkar, Advocate for the applicant.
Mrs. P.P.Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th January, 2017.

P.C.

Heard. This is an application under section 439 of Cr.P.C. The applicant herein is arrested on 10.3.2015 in Crime No.252 of 2015 registered at Mumbra Police Station. The investigation is completed and charge sheet is filed against the applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. It is the case of the prosecution that on 1.3.2015, the wife of the applicant was admitted in the hospital with history of burn injuries. Her statement was recorded as it appears to be a medico-legal case. According to the prosecution, she has disclosed that there used to be intermittent quarrels between the husband and wife and on 1.3.2015, only in order to

threaten her husband she had poured kerosene on her person and had immolated herself. Her husband was present at home. He extinguished the flames and took her to the hospital. She was then sent to Shivani Hospital. She was referred to the Civil Hospital, Thane, where her statement was recorded. It appears that the said statement was recorded by the Police Constable. The endorsement of the doctor in respect of consciousness of the patient was given at 9 p.m. on 12.3.2015.

3. On 2.3.2015, the Executive Magistrate had approached the hospital for recording the statement of the victim, Doctor had given an endorsement that she is not in a position to give statement. On 4.3.2015, the statement of the injured was again recorded by the PSI wherein she had disclosed that the husband was not providing for any funds. That he was an alcoholic and therefore there used to be quarrels between them. On 4.3.2015, she had reiterated her contentions. There is an overwriting on the date 1.3.2015. The learned counsel for the applicant does not have a copy of the charge-sheet as on today. In this case, the investigation is not only casual and careless, but it smacks of insensitivity. Since the learned counsel does not have a copy of the charge-sheet, it is not possible to ascertain the condition of the patient at the time of admission. From the papers of investigation, it appears that the statement was not given by the victim. It is

contended by the learned counsel for the applicant that the statement dated 4.3.2015 was recorded in the presence of the father and therefore the possibility that the statement was tutored cannot be ruled out. The statement of the victim would indicate that she had immolated herself. At the same time, this Court cannot be oblivious of the fact that the charge-sheet is filed against the applicant under Section 302 of the Indian Penal Code. All the dying declarations are shown to be consistent. This is a case of custodial death. The dying declarations do not inspire confidence of the Court and it appears that in all probabilities, the victim has died a homicidal death. Initially, the crime was registered for the offence punishable under Section 307 of the Indian Penal Code by which it can be inferred that the applicant is the author of the burn injuries sustained by his wife.

4. The learned counsel for the applicant submits that the applicant had also sustained burn injuries in the course of extinguishing the flames. It is surprising that the statement of the victim was recorded even after the doctor had given an endorsement that she was not in a position to give the statement. The recording of dying declaration itself is probably tampered and is shrouded with mystery.

5. Hence, the application being sans merit, stands rejected.
6. The learned Sessions Judge shall not be influenced by the observations made hereinabove.

(SMT. SADHANA S.JADHAV, J.)