

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1129 OF 2017**

Abhijeet Babasaheb Gorse

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ashok B. Tajane for the Applicant

Mr. S. H. Yadav, A.P.P for the Respondent-State

PC Mr. V. B. Bajantri from Hinjewadi Police Station, Pune, is present

CORAM : REVATI MOHITE DERE, J.
MONDAY, 3rd JULY, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 310 of 2016 registered with the Hinjewadi Police Station, Pune, for the alleged offences punishable under Section 302 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that there are three dying declarations; one of 29th June, 2016 recorded at the Global Hospital,

Pune, by the Head Constable, Hinjewadi Police Station, Pune; the second dying declaration recorded on 6th July, 2016 by Assistant Sub-Inspector, Hinjewadi Police Station, Pune; and the third dying declaration recorded on 8th July, 2016 by the Nayab Tahsildar, Pune City, Pune. He submits that the second and third dying declarations are inconsistent with the first dying declaration and that the said second and third dying declarations have been recorded, after the relatives of the deceased visited the hospital. He submits that hence, the possibility of tutoring cannot be ruled out. He submits that the applicant is in jail since 7th July, 2016 and that investigation is complete and charge-sheet is filed.

4. Learned A.P.P opposed the application.

5. Perused the papers. The deceased and the applicant were married on 7th April, 2016. The incident took place on 28th June, 2016 at about 10:00 p.m.; the applicant admitted his wife Maya to the Global Hospital, Pune at about 1:15 a.m. In the first dying declaration recorded by Head Constable, Hinjewadi Police Station, Pune, dated 29th June, 2016, Maya has stated that when she was cooking, there was a stove blast, as a

result of which, she sustained injuries on her chest, thighs and face. She has stated that on hearing her cries, the applicant came and extinguished the fire and admitted her to the Global Hospital, Pune. When Maya was admitted, the history is that of stove blast. On 6th July, 2016, Maya's second statement (dying declaration) was recorded by Assistant Sub-Inspector, Hinjewadi Police Station, Pune, wherein, for the first time, she has stated that the applicant would suspect her character and hence, there was a quarrel between them, on the date of the incident. She has alleged that the applicant poured kerosene on her person and set her ablaze. In the said dying declaration, she has not stated anything about the applicant having admitted her to the hospital. The third dying declaration was recorded by Nayab Tahsildar at Pune on 8th July, 2017. The said dying declaration was recorded in Hindi. In the said statement (dying declaration), Maya has stated that the applicant started quarreling with her, as she was looking at some boys. She has stated that in the quarrel, the applicant poured kerosene on her person and set her ablaze. In the said dying declaration also, Maya has not stated as to who had brought her to the hospital. It appears that Maya had sustained 42 to 45% superficial to deep burn injuries and that she was later taken against medical advise, to

Solapur by her family members. Maya succumbed to her injuries on 11th July, 2016.

6. The first dying declaration and the history given to the Medical Officer at the time of admission i.e. of stove blast, is inconsistent with the second and third dying declarations. Whether or not the second and third dying declarations were the outcome of the tutoring or not, is a matter which will be decided by the trial Court. The arrest panchanama shows that the applicant himself had also sustained burn injuries on his hand. Investigation is complete and charge-sheet is filed. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall not tamper the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

- (iii) The applicant shall not leave India, without the prior permission of the trial Court;
 - (iv) The applicant shall surrender his passport, if any, in the trial Court within two weeks of his release;
 - (v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
 - (vi) The applicant to cooperate with the conduct of the trial and will attend the Court on every date of hearing.
7. The application is accordingly disposed of.
8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.