

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1607 OF 2017

**JITENDRAKUMAR @ GULAB GIRIDHARI)
YADAV)...APPLICANT**

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.P.R.Dave, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 13th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.I-121 of 2010 registered with Police Station Kapurbawadi, initially for the offence punishable under Section 307 of the Indian Penal Code (IPC), by this application is seeking his release on bail. After death of Puja, Section 302 of the IPC came to be added to the case diary of the crime in question.

2 Heard the learned advocate appearing for the applicant/accused. He drew my attention to the First Information Report (FIR) lodged by Puja Kumar Gazi (since deceased) while admitted in Civil hospital, Thane, on 3rd May 2010, and argued that the FIR itself reflects that there was dispute between the couple as the applicant/accused was protesting over the issue of Puja working in the ladies bar. The incident in question needs to be accepted as taken place in a fit of anger and therefore, it cannot be considered as an act punishable under Section 302 of the IPC. No intention can be attributed to the applicant/accused. The papers of investigation show that the applicant/accused himself had taken Puja to the Civil hospital and he informed the fact of sustaining burn injuries by Puja to her friend telephonically by stating that Puja indulged in self immolation.

3 The learned APP opposed the application by contending that the material on record gathered by the investigation makes out the offence punishable under Section 302 of the IPC.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet. According to the prosecution case, deceased Puja Kumar Gazi was serving at Sapna Palace – a ladies bar at Kapurbawadi. The applicant/accused was living with her since last eight months prior to the incident and feeling aggrieved by the fact that Puja is working in the bar, he used to quarrel with her. The incident in question took place on 2nd May 2010. On that day, Puja returned from work in bar known as Sapna Palace, at about 10.30 p.m. The applicant/accused then started quarreling with her by saying that he had instructed her not to work in the bar, but she is not listening to him. Then, in a fit of anger, the applicant/accused poured kerosene on her person at about 11.30 p.m. and set her on fire by burning a matchstick. She was taken to the Civil hospital, Thane, by the present applicant/accused himself, and from there he fled. Puja succumbed to burn injuries subsequently and that is how Section 302 of the IPC came to be added to the case diary of the present crime. Evidence against the present applicant/accused is comprising of written as well as oral dying declarations of

deceased Puja Gazi. In her written dying declaration to police, she has categorically mentioned the role of the present applicant/accused in incinerating her by pouring kerosene on her person. Her oral dying declarations are reflected from statement of Sapna Sarkar and Rahul Sarkar. Those oral dying declarations are also consistent in all material particulars with the officially recorded dying declaration of Puja Gazi.

5 From the spot of the incident, a can of kerosene, half burnt wallet and torn pieces of clothes of deceased Puja Gazi were seized.

6 Considering the fact that the quarrel, as seen from the FIR, was picked up by the applicant/accused at about 10.30 p.m. of 2nd May 2010 and the incident of incineration of Puja took place at about 11.30 p.m., it cannot be said, at this stage, that there was no intention to commit murder and that the incident in question took place in a fit of anger. That apart, the applicant/accused was not available for arrest and he came to be arrested on 12th October

2016 i.e. after about six years of the incident. As such, this court is not assured whether the applicant/accused would be available for trial, if he is released on bail.

7 In this view of the matter, the following order :

ORDER

- i) The application is rejected.
- ii) The trial court is requested to expedite the trial.
- iii) Needless to mention that observations made in this order are prima facie in nature and they shall have no bearing on the result of the trial.

(A. M. BADAR, J.)