

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2502 OF 2017

Yeshwant Mahadeo Kachare Applicant

Vs.

The State of Maharashtra Respondent

Mr. Rajesh V. Katore for the Applicant.

Mr. Nitin L. Rajguru for the original complainant.

Mr. S.H. Yadav, APP for the State-respondent.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 19th December, 2017

P.C.:

1 Heard the learned counsel for the applicant and learned APP. Perused the papers of investigation.

2 This is an application under Section 439 of Code Criminal Procedure. The applicant herein is arrested on 18th May, 2017 in Crime No.307 of 2017, registered at Indapur Police Station initially for the offence punishable under Section 307 read with 34 Indian Penal Code. However, subsequently, since the injured succumbed to death, the charge-sheet is filed for the offence punishable under Section 302 Indian Penal Code.

3 It is the case of the prosecution that on 15th May, 2017, Manisha Kachare w/o the present applicant was admitted in the District Hospital with the history of burn injuries.. Since it was a medico legal case, the doctors had informed the Police about the same and the statement of the injured was recorded. Manisha had disclosed to the police that on 15th May, 2017, at about 7.00 am., when she was performing her daily chores in the house, her husband had raised quarrel with her and had poured kerosene on her person and set her ablaze. That her mother-in-law, Jaibai was standing at the door when the incident had occurred. That she had raised hue and cry, at that time, her younger brother-in-law had poured water on her person and extinguished her flames. Thereafter, she was taken to the hospital, where her statement was recorded. Manisha had sustained 75% burn injuries. She had succumbed to the burn injuries on 25th May, 2017 at about 4.00 pm.

4 Learned counsel for the applicant submits that although Manisha had survived for nearly 9 days, her statement under Section 164 Cr.PC. was not recorded. However, this submission is baseless as the case rests on dying declaration of the deceased. Moreover, the brother of the applicant has disclosed to the police that on the date of the incident, he had heard the cries of his sister-in-law and when he rushed to the spot, he saw his brother standing there and Manisha was in flames. The applicant had made no attempts to extinguish

the flames, although he was present. His mother had also not made any attempts. The dying declaration clearly implicates the present applicant in the heinous offence. Learned counsel submits that the incident had occurred 12 years after the marriage and prior to this incident, there is no complaint against the applicant and therefore the applicant deserves to be enlarged on bail.

5 Upon perusal of the dying declaration, it is more than clear that Manisha had died a homicidal death at the hands of the present applicant. Hence, the applicant does not deserve to be enlarged on bail. The application is accordingly rejected and disposed of.

6 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and the trial court shall not be influenced by the same at the time of trial.

(Smt. Sadhana S. Jadhav, J)