

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.819 OF 2016

Mohd. Yusuf Mohd. Harun Rashid Tikki

..VS..

State of Maharashtra, through Police Station Officer, Ner, Tahsil Ner, District
Yavatmal

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri Sibghatullah Jagirdar, Counsel for the applicant.
Shri Mir Nagman Ali, Counsel for the complainant/intervenor.
Shri A.M. Deshpande, Addl.P.P. for the State.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 21, 2017.

In continuation to order dated 10.3.2017,
learned Additional Public Prosecutor, on instructions,
submits that copies of statements of children of
deceased recorded under Section 164 of the Code of
Criminal Procedure are filed with charge-sheet.

Learned counsel for the applicant states that
he is served with such statements by learned counsel for
the intervenor.

This is an application by accused in Crime
No.188 of 2015 registered for the offences punishable
under Sections 302, 201, and 498(A) of the Indian Penal
Code for bail.

Heard learned counsel for the applicant,
learned Additional Public Prosecutor, and learned

counsel for the intervenor.

It is submitted that there is no evidence against applicant establishing his involvement in death of his wife Nasreen Bano and that case of prosecution is based on circumstantial evidence in the form of ligature mark found over neck of deceased which are stated to be antemortem and burn injuries sustained by her which are stated postmortem injuries. Learned counsel has further pointed out that there is no evidence collected during course of investigation to establish as to how deceased sustained ligature mark over her neck. By referring to statements of children of deceased it is pointed out that from their statements no involvement of applicant of his strangulating deceased and then setting her person on fire can said to be established. It is, therefore, contended that since he is in jail from September 2015, application be allowed as charge-sheet is filed.

Learned Additional Public Prosecutor opposed the application contending that from statements of children of deceased involvement of applicant is found as from their statements applicant and deceased had quarreled immediately prior to incident and thereafter applicant set her person on fire. Learned Additional Public Prosecutor however has not disputed that in charge-sheet there is nothing to establish as to how ligature mark found on person of

deceased was sustained by her.

In the background of submissions as aforesaid, perusal of report reveals that it came to be lodged by father of deceased stating that deceased was married to applicant in the year 2000 and from one year prior to lodging of report their relations were strained as deceased was insisting to do some work and earn. It is further stated that thereafter in September 2015 deceased had visited her parental home where applicant reached and took her back to her house. It is stated that on that day deceased had stated to her father that applicant is not doing anything.

Bare perusal of report thus reveals that it is only 14 years after marriage of applicant with deceased, she complained that applicant was not doing anything and then on 5.9.2015 had reiterated said fact to her father and in the background of above it is further stated in the report that on 30.9.2015 deceased was found lying in burn condition in kitchen room. From report it appears that after death of Nasreen Bano, complainant has raised suspicion upon applicant who have set person on fire on pouring kerosene and petrol.

Considering facts in the report as aforesaid, nothing can be established against applicant who hold him guilty for causing death of his wife by setting her person on fire by pouring kerosene and petrol.

Perusal of statements of children of

deceased under Section 164 of the Code of Criminal Procedure does not establish involvement of applicant as a person to have committed murder of his wife as statements of both the children only established fact of some conversation between deceased and her grandmother Fardeen Bano when deceased informed her about alleged quarrel by applicant with his deceased wife. Learned Additional Public Prosecutor, however on instructions makes a statement that no statement of Fardeen Bano is recorded nor there is C.D.R. establishing call between deceased and her grandmother. From the statements of children it is further revealed that on the day of incident at around 11:00 a.m. both children went to their school and returned back at 5:00 p.m. in the evening and learnt that their mother was lying in burnt condition inside the kitchen room in their house, however, they were not allowed to go in the room where she was lying. Though children appears to have further stated against applicant alleging him to have caused murder of their mother, said statement for want of any other corroborative evidence on record is too short to establish involvement of applicant in this crime.

In that view of the matter and since investigation is complete and further evidence pointed out by learned Additional Public Prosecutor of applicant purchasing petrol on the day of incident by itself does

not establish his involvement in the present crime in the absence of ample other evidence.

In the circumstances, application is allowed as per order below.

Applicant shall be released on bail on his executing a P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

Applicant shall attend investigating officer once in three months on the first day of each such month, pending Trial.

Applicant shall not reside within territorial limits of Ner, Tahsil Ner, District Yavatmal, pending Trial and shall not tamper with evidence in any manner.

Applicant shall submit proof of his residence with investigating officer and shall update the same in the event of change in future.

Needless to say that observations as aforesaid are *prima facie* and learned Trial Judge shall not get influenced with the same and shall independently evaluate the evidence at the time of Trial.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on :- 23/3/2017