

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MCRC No. 7944 of 2018**

Suresh Ekka S/o Rajaram Ekka Aged About 23 Years R/o Bataikela
Ghodapara, Police Staion And Tahsil Sitapur District Surguja
Chhattisgarh

---- Applicant**Versus**

State Of Chhattisgarh Through Station House Officer Police Station,
Sitapur, District Surguja Chhattisgarh

----Non-applicant

For Applicant	:	Dr. Nishikant Sinha, Advocate
For State	:	Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/11/2018**

1. This is an application filed under Section 439 Cr.P.C. for grant of bail to the applicant, who has been arrested in connection with Crime No. 246/2017 registered at Police Station Sitapur, District Surguja, Chhattisgarh for the offence punishable under Section 302 of Indian Penal Code.
2. The present applicant is in jail since 12.12.2017 in connection with the aforesaid Crime number.
3. The case of the prosecution against the present applicant is that the present applicant in the intervening night of 23rd/24th August, 2017 is said to have poured kerosene oil over the deceased and set her ablaze. The prosecution case is that the dying declaration was recorded on 25.10.2017 and thereafter the deceased died on 27.10.2017 thereafter on merge intimation an F.I.R. was registered against the present applicant for the offence under Section 302 of the Indian Penal Code.

4. The contention of the counsel for the applicant is that the present applicant has been falsely implicated in the present case, in as much as there is no sufficient material collected by the prosecution in the course of the investigation to implicate him for the offence under Section 302 of Indian Penal Code. He further submits that the only reliance which has been made by the prosecution is to an alleged dying declaration, which was said to have been recorded on 25.10.2017. It is also the contention of the counsel for the applicant that the authenticity of the dying declaration itself is doubtful as the same has been recorded by a Executive Magistrate without there being any complaint made whatsoever by any person, nor was there any Doctor, who could ascertain the actual physical condition of the deceased. It is the further contention of the applicant that the incident is of 24.08.2017, the deceased died on 27.10.2017 and in between she had sufficient opportunity to have implicated the present applicant for the alleged offence, which she had not done, itself gives rise to the great element of doubt on the prosecution story. It is the further contention of the petitioner that even otherwise the deceased appears to have died because of not being provided sufficient prompt medical treatment, rather she was being treated locally by the family members of the deceased as is revealed from the statement of the mother of the deceased and for this reason also the applicant cannot be charged for the offence under Section 302 of the Indian Penal Code.
5. The State counsel on the contrary opposes the bail application on the ground that death of the deceased was just within 4 years from the date of marriage. Moreover there is a dying declaration recorded

by the Executive Magistrate on 25.10.2017, wherein she has specifically made allegations against the present applicant of having poured kerosene and set her ablaze. Thus the State counsel prayed for rejection of the bail application.

6. Having heard the contentions put forth on either side and on perusal of the record, particularly taking note of the fact that the incident is of 24.08.2017 and till 25.10.2017, the condition of the deceased was not critical and that she was normal and during this period, she did not make any allegations against the present applicant. Further, there also does not appear to be any plausible reason under which the Executive Magistrate could have recorded the dying declaration on 25.10.2017 as by that time, there was no complaint or report lodged before any of the authorities. Moreover, it appears that the death of the deceased occurred after more than 2 months from the date of incident.
7. Given all the facts and circumstances of the case and also taking note of the period of custody undergone by the applicant, this Court is of the opinion that a strong case for grant of bail has been made out. Accordingly, the present application for grant of bail is allowed.
8. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Court for his appearance before the said Court as and when directed.

Sd/-
(P. Sam Koshy)
Judge