

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

**CRIMINAL APPLICATION NO. 102 OF 2018
IN
CRIMINAL APPEAL NO. 131 OF 2016**

Anushree Satishkumar Kundra Age: 45, Occupation: Service Residing at 25/7, West Patel Nagar, New Delhi-110008 At present-Lodged in Byculla Women's Jail	... Applicant (Orig.Accused)
Versus	
The State of Maharashtra (At the instance of Wanwadi Police Station, Pune C.R.No.237/11)	... Respondent

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Mr. Abad Ponda i/b Ashish Raghuvanshi for Appellant.
 Mrs. M. M. Deshmukh APP for the State.

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**CORAM : S. C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

RESERVED ON : 06th APRIL, 2018

PRONOUNCED ON : 27th APRIL, 2018

P.C. :-

1. This is an application for grant of bail by suspending the sentence of imprisonment imposed by the Trial Court in Sessions Case No. 197 of 2012 vide judgment and order dated 15/12/2015.

2. The applicant has preferred an appeal challenging the aforesaid judgment and order passed by the learned Additional Sessions Judge, Pune convicting her for the offence punishable under Section 302 of Indian Penal Code and sentencing her for imprisonment for life as well as conviction for the offence punishable under Section 307 of Indian Penal Code and sentencing her to suffer R.I. for seven years. The appeal has been admitted. The applicant had preferred an application for suspension of sentence and grant of bail viz; Criminal Application No. 209 of 2016 which was not pressed and was allowed to be withdrawn. The liberty to withdraw the application was sought with a prayer for hearing the appeal expeditiously. The said application was disposed of by order dated 08/02/2017 allowing the applicant to withdraw the same with directions to the Registry to place Criminal Appeal No. 131 of 2016 on the final hearing board in the week commencing from 10th April, 2017. It was also directed that in case the said appeal is not heard within a period of six months from the date of passing order, the applicant will be entitled to renew her prayer for bail. The appeal is not yet heard.

3. The case of the prosecution in nutshell is that PW-8 Nimesh Sinha was in relationship with the applicant-accused and they were living together in live-in relationship. The accused put up a proposal before the said witness (PW-8) for marriage. His family did not approve the marriage as the accused was 12 years elder than the said witness. Hence, they decided not to continue their relationship. Both of them decided to live separately. PW-8 was knowing Juhi Prasad (deceased). Marriage proposal of Juhi was received in 2011. At that time, he met the accused at Pune and thereafter she visited PW-8 at his residence on 12/10/2011. By that time the marriage of PW-8 was settled with Juhi Prasad. She was staying at Delhi. Mother of PW-8 told Juhi that the applicant-accused had come to the residence of PW-8. Hence, Juhi came to Pune. At that time, accused was also at the flat of PW-8. The accused insisted for breaking of relationship with Juhi Prasad and also threatened him of dire consequences. The conversation between all three of them was going on till 6.00 a.m. on 13/10/2011. Thereafter, the accused told PW-8 and Juhi to go ahead with the marriage. PW-8 and Juhi went to sleep in the bedroom. At about 9.00 to 9.30 a.m. PW-8 felt smell of

kerosene/petrol. Both of them woke up. They saw Anushri (accused) holding a bottle and pouring petrol on their body. She set the bed on fire with match stick. PW-8 and Juhi sustained burn injuries. Juhi was taken to hospital where she succumbed to the burn injuries on 22/10/2011. While in the hospital, two dying declarations of Juhi were recorded. The applicant was arrested on 15/11/2011. On completing investigation the charge-sheet was filed. The applicant was charged for the offences under Sections 302, 307 of Indian Penal Code.

4. Mr. Ponda, the learned Advocate representing the applicant, submitted that the applicant is in custody for a period about 6 ½ years, although, the hearing of the appeal was expedited, the same could not be heard. The prosecution case suffers from serious infirmities and that the prosecution has not been able to establish its case beyond reasonable doubt. It is submitted that the prosecution is heavily relying upon the evidence of PW-8 and the two dying declarations purportedly made by the deceased Juhi. He submitted that the so called dying declarations are suspicious documents and the evidence of PW-8 speaks volume of doubt. He submits that PW-8 and the

investigating machinery has concocted the case to falsely implicate the applicant in the crime. There was sufficient opportunity to the investigating machinery and the interested witnesses for deliberations and create false evidence against the applicant. It is submitted that the alleged incident had occurred at about 9.00 to 9.30 a.m. on 13/10/2011, the alleged dying declarations were recorded at about 10.15 and 11.40 p.m. The nature of injuries sustained by PW-8 and the deceased creates doubt about the evidence of PW-8 and the version of the deceased in the dying declarations. Both the dying declarations are concocted documents.

5. Mr. Ponda further submitted that the name of the scribe of first dying declaration (Exhibit-107) had come on record for the first time only in the statement of Senior P.I. Mohite (PW-13) by way of improvement. The scribe of the first dying declaration was not examined by the prosecution. It is submitted that the endorsement of doctor stating that the patient was conscious while giving the statement prior to recording of dying declaration (Exhibit-107) and after the recording of the dying declaration bears the same time which casts a doubt as to whether

the patient was actually examined prior to recording the dying declaration. Learned Counsel also pointed out that PW-5 – Naib Tahsildar who allegedly recorded second dying declaration, has stated that no ink mark was seen on the toe of the victim. According to the prosecution Exhibit-107 bears toe impression of victim which was taken at about 10.45 p.m. It is submitted that the recording of second dying declaration is doubtful due to several reasons. According to PW-13 he sent PSI Sanas with a requisition letter at about 8.00 p.m. to the Tahsildar for recording the statement of deceased. The said requisition letter bears the stamp and sign showing receipt of the same by the office of Tahsildar. The said office closes at 5.45 p.m. and PW-5 has stated that she had left the office at around 6.30 to 7.00 p.m. Therefore, the requisition letter could not have been stamped and signed showing the receipt of the same. The FIR was registered at 10.45 p.m. The requisition contains the C.R. number, the offence with which the offence has been charged which was not possible prior to 10.45 p.m. and if the requisition letter is suppose to have been given after 10.45 p.m. with a stamp of receipt, even in that scenario it is not possible for the Magistrate to reach the hospital

within half an hour since her residence is situated at 25 kms away from the hospital. The prosecution has failed to bring on record or prove that the deceased was in conscious and well oriented condition to give statement in such a great detail to the Magistrate. The dying declaration has been concocted by the police and it has not been recorded as per the say of the deceased but at the instance of PW-8 Nimesh Sinha. The evidence indicates that the entire face of the victim was burned and therefore, it is difficult to accept that she was able to speak elaborately about the alleged incident. PW-8 was not taken for recording the FIR though he was the eye witness. According to the prosecution, the accused was standing near the legs of the deceased and PW-8 while the accused was pouring petrol and when they woke up the accused suddenly lit the match stick. According to PW-8 both of them were sleeping on the bed, but surprisingly the deceased sustained 75 to 85% burns and PW-8 sustained superficial and minor burns on the upper part of the body and not the lower part of the body. There is no explanation from prosecution as to how the curtains and the sofa got burned. The version of PW-8 is doubtful and it is apparent that the applicant has been implicated on the basis of concocted

version of PW-8 and the fabricated dying declaration. The evidence of the other witnesses in the society can also be not accepted as gospel truth in view of several contradictions and omissions in their evidence. It is submitted that there was enough opportunity to the witnesses to concoct the story to falsely implicate the applicant. Suggestions were given to PW-8 that he is the perpetrator of crime. The e-mail sent by Juhi to PW-8 indicates that she was not happy with his relationship with accused. It is therefore submitted that the applicant be released on bail.

6. Learned APP vehemently opposed the prayer for grant of bail. She submitted that there was voluminous evidence against the applicant establishing her involvement in the crime. The prosecution has been able to put-forth the evidence beyond all reasonable doubts which has been considered by the Trial Court. It is submitted that the evidence of PW-8 and the dying declarations of the deceased clearly prove the involvement of the applicant in the crime. The said evidence was corroborated by the witnesses from the building wherein the incident had occurred. The said witness has established the presence of the accused in the premises at the time of incident. It is further submitted that the CC

TV footage of the petrol pump shows that the applicant-accused has visited the said petrol pump for purchasing the petrol which corroborates the prosecution case that the applicant is a person who poured the petrol on the deceased and PW-8. The evidence of Medical Officers also show that the victim was conscious and was in a position to make the statements which attributes overt act to the applicant and there is no reason to doubt the genuineness of dying declarations. The prosecution has filed affidavit-in-reply contending that the evidence of the witnesses examined at the instance of the prosecution has proved the involvement of the applicant in the crime. She had a motive to commit the crime. She was in relationship with PW-8. When she came to know about the fixation of the marriage of PW-8 with deceased Juhi, she came to the residence of PW-8 and there was deliberation between three of them throughout night till 6.00 a.m. and thereafter she left the premises, brought the petrol and poured the same on the victim and PW-8 and lit the matchstick. No case for bail is made out by the applicant, hence the application may be rejected.

7. We have perused the evidence on record. *Prima-facie*, the infirmities in evidence highlighted by learned counsel for

applicant could not be explained by the prosecution. The prosecution is primarily relying upon the evidence of PW-8 Nimesh Sinha and the two dying declarations purportedly made by the deceased Juhi. The prosecution case is that the accused poured petrol/kerosene on the person of the deceased and PW-8 who were sleeping on the same bed at the time of alleged incident. The act of pouring petrol/kerosene was followed by lighting match stick and throwing the same on the victim and the injured. It is pertinent to note that the accused was allegedly standing near the legs of the persons who were sleeping on the bed when the incident took place. In this scenario, there is doubt as submitted by applicant as to how PW-8 has sustained burn injuries only to his hands, while the deceased had sustained about 75 to 85% burns. It is also noted that the incident had occurred at about 9.00 to 9.30 a.m. on 13/10/2011 and the first dying declaration was recorded in the night at about 10.15 p.m. Even FIR was recorded at that point of time. There was a long gap in setting law into motion and showing involvement of the applicant in the crime. The deceased was taken to private hospital wherein the alleged dying declarations were recorded. The scribe of the

first dying declaration is not examined. It is not clear that as to who has recorded the said dying declaration. As far as second dying declaration is concerned, the defence has pointed out several infirmities and submitted that the same is not genuine which could not be explained by the prosecution. The defence has also brought on record the e-mail sent by the deceased few days prior to the incident to PW-8 wherein Juhi had expressed displeasure qua conduct of PW-8, his relationship with accused and his loyalty towards her. The prosecution has not brought the medical papers on record to support its case regarding consciousness of the patient. The applicant has contended that since the medical papers have not been produced by the prosecution, it has failed to prove that there was any entry as to the examination of the patient by Dr. Moenuddin Farooque and therefore the prosecution has failed to bring on record or prove that the deceased was in a conscious, well oriented condition to give a statement in such a great detail to the Naib Tahsildar and neither has the said witness stated in her statement that she has ascertained that Juhi was conscious, well oriented and able to give statement. There is distinction between kerosene and petrol. The

prosecution appears to be doubtful as to what was being used by accused to allegedly set the victims on fire. The witnesses have referred to kerosene/petrol being used for commission of alleged crime. All these circumstances put forth by applicant in support of bail which could not be explained by prosecution, *prima-facie* show that there is substance in the submissions advanced by the learned Advocate for the applicant. We are conscious of the fact that we are dealing with the application for bail and the appeal challenging the judgment and order of conviction is to be heard finally. However, in the light of the observations stated herein above and also considering the fact that the applicant is in custody since last 6 ½ years, she can be granted bail on certain terms and conditions. Hence, we pass the following order.

ORDER

- (a) Pending hearing and final disposal of the Criminal Appeal No. 131 of 2016, the sentence imposed by the Trial Court is suspended and the applicant is directed to be released on bail on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount.

- (b) The applicant shall not leave India without prior permission of this Court.
- (c) The applicant shall deposit her passport in this Court.
- (d) The applicant shall furnish her residential address to the concerned police station.
- (e) The application stands disposed of.

(PRAKASH D. NAIK, J.)

(S. C. DHARMADHIKARI, J.)