

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

CRIMINAL BAIL APPLICATION NO.406 OF 2018

Sitaram Janaba Chalke

... Applicant

V/s

State of Maharashtra

... Respondent

Mr.Manish Mazgaonkar for the Applicant.

Mr.Rajan Salvi, APP for the State.

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JUNE 05, 2018.

P.C. :

1. Heard.

2. This is an application under Section 439 of Cr.P.C.. The applicant herein is arrested on 19th June 2017, in Crime No. 71 of 2017, registered at Ajara Police Station, Kolhapur. The investigation is completed and charge-sheet is filed. Initially, the offence was registered under Sections 498A and 306 r/w 34 of IPC. However, after completion of investigation the charge-sheet is filed under Sections 302, 498A r/w 34 of IPC.

3. It is the case of the prosecution that on 17th June 2017,

Reshma Sitaram Chalke i.e. the wife of the present applicant was admitted in City hospital with history of burn injuries. She was then transferred to CPR hospital at Kolhapur.

4. The statement of injured was recorded after seeking opinion from the doctor in respect of her state of mind. On 18th June 2017, at about 10.40 a.m. the doctor has given his opinion that patient is a case of 97% burn injuries. Patient is conscious and oriented with time, place and person and she is in a state to give valid statement. Her statement was recorded by Nayab Tahasildar Sanjay Gandhi. The injured had disclosed to the Executive Magistrate that she was married to the present applicant for the last 11 years. He is an Ex-Army Personnel. He is an alcoholic. He used to raise quarrels with his wife. That on 16th June 2017, he had consumed alcohol at Kandgaon and was lying in an unconscious condition at Kandgaon. When he regained consciousness, he returned home and alleged that his wife has concealed his wallet. He raised quarrel and in the midst of the quarrel he poured kerosene on the person and set her ablaze. Upon hearing the shouts, neighbours gathered and had taken her to the hospital. She has made specific allegations

against her husband. It is a matter of record that the applicant had sustained a few blisters and discoloration on the right side of the body.

5. It is pertinent to note that Reshma had succumbed to burn injuries on 18th June 2018 itself. On the very day i.e. on 19th June 2018, the statement of the daughter of the complainant was recorded. She was studying in 4th standard. She has disclosed to the police that her father used to raise quarrels. On the day of the incident when she had returned home and she had seen her father in an intoxicated state of mind and he was quarreling with her mother. In the midst of the quarrel her father had poured kerosene on her mother and set her ablaze.

6. Learned counsel for the applicant vehemently submits that the dying declaration is fabricated piece of evidence and none of the relatives of the deceased have stated that it is a case of homicidal death. Moreover, according to the learned counsel when Reshma was admitted in the City hospital she was unconscious and the dying declaration is recorded in CPR Hospital, inspite of that the offence was registered under Section 306 of IPC. The case was transferred to Ajara police station and

alongwith the case papers the dying declaration was not sent and this by itself would indicate that the said dying declaration is subsequently fabricated. However, the court cannot be oblivious of the fact that there could not be eye witness to the incident. The statement of child witness has been recorded on the very next date of demise of her mother and same cannot be faulted at this stage. The laxity in the recording of the dying declaration can be scrutinized and criticized, can be considered at the time of trial. Taking into consideration the fact that the dying declaration clearly implicated the present applicant as well as the fact that the child who is an eye witness has also implicated her father. No case for bail is made out. The application being sans merits stands rejected. It is made clear that the observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and the learned Sessions Judge shall not be influenced by the same at the time of trial.

(SMT.SADHANA S.JADHAV, J.)