

Sequeira

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

**CRIMINAL APPLICATION NO. 1551 OF 2018
in
CRIMINAL APPEAL NO. 1115 OF 2018**

Savita @ Manali Minanath Katore and others ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.Nitin Sejpal, for Applicants.

Mr.H.J.Dedhia, APP for Respondent-State.

Ms.Megha S.Bajoria, for Respondent No.2.

***CORAM : S. S. SHINDE &
MRS.MRIDULA BHATKAR, JJ.***

Date : September 28, 2018.

P.C. :

This Application for bail is moved by the four Applicants who are convicted vide Judgment and Order dated 31 August 2018 passed by Additional Sessions Judge Mangaon, District Raigad in Sessions Case No.4 of 2013, for the offence punishable under section 302 read with section 34 of the Indian Penal Code, for imprisonment of life and to pay fine of Rs.10,000/- each in default R.I. for six months.

2. The Applicant Nos.1, 2, 3 and 4 are the sister in-laws of deceased Vinita Ganesh Divkar who was set on fire on 4 September 2012, at her residence by these four ladies. Initially the offence was registered at C.R. No.95 of 2012. Subsequently, it was converted and registered under section 302 of Indian Penal Code.

3. Learned counsel for the Applicants has submitted that the conviction is based on two dying declarations. Besides dying declaration there is no adequate and sufficient evidence to hold the Applicants guilty. He has submitted that the father and brother of the deceased has turned hostile. So also the husband of the deceased did not support the prosecution. He has submitted whether the deceased was in a position to make statement or not is doubtful. He has submitted that the learned trial Judge ought not to have believed these dying declarations and based conviction on these two dying declarations and on this evidence only. Assuming incident has taken place as per the case of the prosecution however it was in spur of a moment and not a planned murder. Learned counsel has further submitted that all the Applicants/ Accused are ladies and they were on bail during the trial. They have not abused the bail throughout the trial. They are not criminals. They are only housewives. He submitted that each of them is a mother and they have to look after their children. The Appeal filed by the Applicants/Accused would take time and hence the Applicants/Accused be granted them bail.

4. The learned APP while opposing the bail application has relied on the two dying declarations and evidence tendered by the prosecution, of the doctor and the Tahsildar and also the police officer who have recorded the dying declarations. The learned APP argued that the conviction based on these two dying declarations would be justified and as the Applicants / Accused are convicted, they are not to be released on bail.

5. We have considered the submissions of learned counsel of the Applicants/Accused and also learned APP. There are two dying declarations wherein the deceased attributed a role to the three Applicants/Accused of holding her and to the fourth Applicant of setting her on fire. Prima facie it looks that the incident has occurred after quarrel which took place on a trivial issue of payment of electricity bill and it has resulted in death of the deceased.

6. This evidence will be considered threadbare at the stage of hearing of the Appeal. The Applicants/Accused are women and mothers as submitted by the learned counsel for the Applicants/Accused. The total eight children of these Applicants/Accused are of tender age and are dependent on their mothers. This fact is a major consideration in deciding this bail application. The Applicants/Accused were on bail throughout trial and have not abused the bail. It is true that this Appeal, considering the pendency of the matters, will not be heard in near future. In view of this we grant bail on following conditions -

- a) The Bail Application is allowed.
- b) The Applicants/Accused Nos.1 to 4 shall be released on bail on their executing fresh bail bonds of Rs.30,000/- each with one surety in the like amount.
- c) The Applicants/Accused shall furnish their permanent as well as temporary address, if any, as well as their contact numbers. The Applicants shall not change their address without prior permission of the Court.
- d) They shall not jump the bail.

(MRS.MRIDULA BHATKAR, J.)

(S. S. SHINDE, J.)

Maria Luiza
Nicholas
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