

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

CRIMINAL BAIL APPLICATION NO. 2991 OF 2017

Kashinath Tathu Chavan. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Rameshwar N. Gite, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 2, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for state.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 12/7/2016 in Crime No. 52 of 2016 registered at Vadner Khakurdi Police Station, Taluka Malegaon for offence punishable under section 302, 452, 307, 504, 506 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the daughter in law of the present applicant namely Anita Chavan was admitted in the hospital on 11/7/2016 with history of burn injuries. Since it was a medico legal cases, the police had recorded statement of patient. She had disclosed to the police that on that day i.e. on 11/7/2016 at about 10.30 a.m. present applicant alongwith other sons namely Janardan and Raghunath had been to the house of Anita and enquired about the whereabouts of her husband. She had disclosed that he was not at home. They seem to be annoyed with the fact that her husband was asking for partition in the agricultural property and hence, the applicant poured kerosene on her and set her ablaze. The information was given to her husband. She was admitted in the hospital by her husband and her relatives. On the basis of the said statement, offence was registered. The injured had succumbed to the injuries on 17/7/2016.

4 The learned Counsel for the applicant submits that the applicant has been falsely implicated by his own son since he was demanding partition. The learned Counsel for the applicant has drawn attention of this Court to the case papers issued by Rachana Multispeciality Hospital where the injured was admitted. At the time of admission, the history was given, which was recorded at 11 a.m. The history was recorded as follows :

“Accidental burn while preparing food on Chula at 7 a.m. on 11/7/2016, brought here by husband and relative Digamber Chavan.”

The learned Counsel submits that this is a case of accidental burns and in fact, she had sustained accidental burn at 7 a.m.. However, the time of burn is shown as 11 a.m. Even according to her, the incident had occurred at 10.30 a.m.

5 This Court had seen the scene of offence panchanama. It appears that in the kitchen there is a kitchen platform and there is no mention of oven. Half burnt clothes of the deceased were found in the kitchen room. Hence, the history has been falsified by the scene

of offence panchanama. Moreover, the version given in the dying declaration has further been corroborated by the daughter of the deceased. One of the minor daughter is an eye witness and she has specifically stated that on that day, the applicant and other two sons had been to their house and the applicant had poured kerosene on her and set her ablaze.

7 According to the learned Counsel for the applicant in the oral dying declaration, the deceased had disclosed to her elder daughter that the minor daughter was playing outside the house and therefore, the minor daughter cannot be considered as an eye witness. This Court cannot be oblivious of the site of the house. It can be seen that the minor daughter had disclosed that the applicant alongwith other two accused had entered into the house and soon thereafter, her mother was found in flames.

8 Taking into consideration the above mentioned facts, this Court is not inclined to grant bail since a case under section 302 of the

Indian Penal Code is made out on the basis of the dying declaration and corroborative material, which can be converted into substantive evidence. The application being sans merits stands rejected.

9 However, the observations are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and the trial Court shall not be influenced by the same at the time of trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)