

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

CRIMINAL BAIL APPLICATION NO. 3043 OF 2017

Baban Trambak Wagh.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. B.K. Barve a/w. Mr. Sandeep Barve i/b. B.K. Barve & Co.,
advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

Mr. Ambadas More, PI, Saykheda Police Station, Nashik(Rural).

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 30, 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 7/3/2017 in
Crime No. 18/2017 registered at Saikheda Police Station for offence
punishable under section 302, 307, 498A, 323, 504, 506 of the Indian

Penal Code read with section 5, 9, 32 of Protection of Women from Domestic Violence Act. Investigation is completed and charge-sheet is filed.

3 Son of the applicant namely Tanaji was married to Pushpa on 13th March, 2017. Pushpa was admitted in hospital with history of burn injury. Since it appears to be a medico legal case, the police had requested Executive Magistrate to record statement of the victim. Accordingly, statement of the victim was recorded. Pushpa disclosed to the executive magistrate that on 6th March, 2017 there was quarrel between her and her in-laws. Her husband had assaulted her. She was also assaulted by her mother-in-law and sister in law and brother in law had snatched her hair. Her husband poured kerosene and set her ablaze. On the basis of the said report, Crime No. 18 of 2017 was registered.

4 It appears that on 7/3/2017 second statement of the victim was recorded and according to her on 6/3/2017 the applicant herein who happens to be father in law had poured kerosene on her and asked

Tanaji to set her ablaze. It is on the basis of the allegations levelled against the applicant in the supplementary statement, the applicant has been arrested. The learned Counsel for the applicant vehemently submits that it is a matter of record that in the first statement, there is no reference to the presence of the applicant at the time of the incident. That specific role is attributed to the mother-in-law, sister-in-law and brother-in-law. However, they have been enlarged on bail by the Sessions Court. Son of the applicant Tanaji is in custody. It is clear that there is variance in the statement of the victim as far as the present applicant is concerned.

5 The learned APP upon instructions submits that supplementary statement of the victim has been videographed and that there is certificate under section 65 of the Indian Evidence Act.

6 Taking into consideration the papers of investigation and the fact that there is inconsistency in both the statements of the victim recorded under section 32 of the Indian Evidence Act and the fact that

no role was attributed to the applicant in the first statement, the applicant deserves to be enlarged on bail.

7 However, the observations made hereinabove are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration while deciding application for quashing of FIR or discharge application or at the time of trial by the trial court.

8 Hence, following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.
 - (v) The applicant shall not tamper with the evidence.
- 9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)