

HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1599 OF 2019

Chaya Bhagwat Gaikwad and Anr.	... Applicants
Versus	
The State of Maharashtra	... Respondent

Mr. Ritesh Thobde, Advocate for the Applicants.
Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 4th July, 2019.

P. C. :-

1. The applicants are seeking bail in connection with CR No. 738/18 registered with Mohol Police Station, District Solapur under Sections 304-B, 498-A, 323, 504, 506 read with 34 of the IPC. The FIR is lodged by one Mahadev Jadhav in respect of death of his daughter Sakhubhai on 1st October 2018.

2. It is the case in the FIR, that, his daughter Sakhubhai had got married with Samadhan Gaikwad on 20th March 2016. The present applicant no. 1 is the mother and the applicant no. 2 is sister of Samadhan. It is mentioned in the FIR that the informant had paid for marriage expenses and had agreed to pay Rs. 25,000/- as the balance

of dowry. It is mentioned in the FIR that after initial period of five to six months when she was treated properly, the applicants and other family members of the husband started ill treating her. It is his case that they all of them used to frequently quarrel with her. Accused were demanding Rs. 25,000/-. It is his case in the FIR that in the month of September 2018, his daughter Sakhubai was five months into her pregnancy. On 23rd September 2018, the informant and his wife had gone to the applicant's house. At that time all the accused were telling him to take back his daughter to his house.

3. On 27th September 2018 at 11.00 a.m. the informant received a phone call from the officer of Mohol Police Station informing him that Sakhubhai and her husband Samadhan had suffered burn injuries on 26th September 2018 and they were admitted in Civil Hospital at Solapur. When informant, his wife and one relative Kakasaheb went to the Civil Hospital, they met Sakhubai. She initially told them that she had suffered burns while they were removing honey bees from their house and when they were using petrol for that purpose. It is the case of the informant that they did not believe her and on 29th September 2018 after taking her in confidence, inquired with her further. She told them that there was a quarrel with her husband. The applicants

instigated her husband to finish her. Her husband poured petrol on her and set her on fire. The deceased survived for a couple of days and ultimately she died on 30th September 2018 at 7.30 p.m. On such allegations the FIR was lodged. The applicants were arrested on 1st October 2018. The other accused, i.e. the husband and father-in-law were also arrested. Since their arrest, applicants are in custody. The applicant no. 2 has two young daughters.

4. Heard, Mr. Ritesh Thobde, learned counsel for the applicants and Mr. Prashant Jadhav, learned APP for the State.

5. Learned advocate Mr. Thobde for the applicants submitted that apart from oral dying declaration there is a written dying declaration recorded by PSI of Mohol Police Station, which completely exonerates the applicants. He submitted that the FIR is lodged on the basis of suspicion and out of grief. He submitted that both the applicants are ladies. The applicant no. 2 having two young daughters. Therefore, their continuous detention before trial will not serve any purpose.

6. As against this learned APP submitted that the FIR clearly shows that the oral dying declaration refers to the role of the present applicants.

7. I have considered their submissions and I have also perused the

chargesheet annexed to this application. The dying declaration of the deceased was recorded on 27th September 2018 at 10.30 a.m. by PSI, Mohol Police Station in which she has stated that, while they were removing the beehive from their house and when the deceased's husband had poured petrol on that beehive, it was ignited by lighter and accidentally both of them caught fire. They have suffered injuries because of this. This statement is infact supported by the medical evidence which shows that the husband had suffered 18% burn injuries. These injuries are not explained by the oral dying declaration made allegedly by the deceased to the first informant. The deceased had survived for couple of days more and yet no further dying declaration was recorded by any special executive magistrate.

8. Considering these aspects, there is a strong possibility that the written dying declaration depicts the correct story. At this stage, there is sufficient doubt created in respect of the narration in the FIR. Therefore, considering these facts and also the fact that the applicant no. 2 has two young daughters and applicant no. 1's role is similar to that of the applicant no. 2, following order is passed:-

ORDER

1. The Applicants are directed to be released on bail, in connection

with C.R. No.738/18 registered with Mohol Police Station, Dist. Solapur, on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties each in the like amount.

2. Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)