

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

CRIMINAL BAIL APPLICATION NO.2132 OF 2019

Chandrakant Bhimraya Pandecharry	 Applicant
versus	
The State of Maharashtra	 Respondent

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- Mr.Aniket Nikam i/b. Vivek N. Arote, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.313/18 registered with Mangalvedha Police Station, Solapur, dated 13/08/2018, under sections 376, 307, 302, 506 of the Indian Penal Code and under various sections of Motor Vehicle Act, 1981.
2. The Applicant was arrested on 13/08/2018 and since then he is in custody. The investigation is over and charge-sheet is already filed.

3. The prosecution case is that the victim was a widow and was having a daughter. She was residing with her parents. On 12/08/2018 between 04.00 p.m. to 05.30 p.m. in village Yelgi, Taluka Mangalvedha, the Applicant committed rape on the victim and thereafter poured kerosene on her person and set her on fire. The FIR was lodged pursuant to the statement given by the deceased herself. It was recorded at 05.00 a.m. on 13/08/2018. She has stated in her FIR that the Applicant was known to her and he was trying to get friendly with her. He was suggesting that they should keep physical relations. He even used to threaten her on that count. On 12/08/2018 at around 04.00 p.m. the victim was alone in the house. The Applicant came there and enquired about the family members. When he came to know that there was nobody in the house, he forcibly took the victim inside the house and committed rape on her. The victim told him that she would inform her parents and she sat crying near her house. The Applicant came from behind, poured kerosene on her and set her ablaze. She was seriously injured. Then her relatives took her to hospital. Initially she was taken to

a Government dispensary at Mangalvedha and then she was shifted to civil hospital at Solapur. In the civil hospital her statement was recorded.

4. On the same day between 01.00 p.m. to 02.00 p.m. her Dying Declaration was recorded in question answer form. In that Dying Declaration, also she has narrated the same story.
5. Besides these two Dying Declarations there are statements of six witnesses namely Nagini Mutappa Sangoni, Gaurabai Amsiddha Dhane, Amsiddha Kalappa Dhane etc. who had reached there soon after the incident. Nagini has stated that at around 05.00 p.m. on 12/08/2018 she heard shouts of the victim. She went there, she saw that the victim's mouth was gagged by one unknown person and he set her ablaze in front of this witness. The victim was shouting that Chandya had set her ablaze. This witness tried to apprehend that person, but he ran away. When the victim was taken to hospital, she narrated the same story to Gaurabai, Amsiddha etc. Thus, there are oral

Dying Declarations apart from the statement of eyewitness Nagini.

6. Heard learned Counsel Mr.Aniket Nikam for the Applicant and learned APP Mr.Prashant Jadhav for the State.
7. Mr.Nikam submitted that there is complete variance between the story of the victim in the FIR and statement of eyewitness Nagini. The Dying Declaration recorded in the hospital does not even refer to presence of any third person, but Nagini has categorically stated that she went there and in front of her, the incident took place. She even tried to apprehend the accused. Mr.Nikam therefore submitted that both these stories cannot be true and the Applicant appears to have been falsely implicated.
8. Mr.Jadhav, learned APP, on the other hand supported the prosecution case based on the Dying Declarations.

9. I have considered these submissions. The post-mortem notes show that the deceased had suffered 85% burn injuries. The Applicant on the other hand had suffered only minor superficial burns. Thus, presence of the Applicant is established at the spot. The other fact is that the Applicant has not tried to save the deceased. Nagini's statement is narrating a different story, but at this stage, it is difficult to observe that the Dying Declarations by the victim are not correct. Besides the written Dying Declaration, there are oral Dying Declarations which are consistent. In this view of the matter, at this stage, no case for bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)