

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO. 1155 OF 2021
IN APEAL/222/2021

ARCHANA W/O LAXMAN MASKE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent-State : Mr. Shashibhushan P. Deshmukh

.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 03rd SEPTEMBER, 2021**

PER COURT:-

1. Pending Criminal Appeal No. 222 of 2021 preferred against the judgment and order of conviction dated 20.03.2021 passed by Additional Sessions Judge, Hingoli in Sessions Trial No. 19/2018, convicting thereby the applicant and the co-accused for the offence punishable under Section 302 r/w Section 34 of IPC and sentencing them to suffer imprisonment for life and to pay fine of Rs.3,000/- each, in default, to suffer S.I. for six months, the applicant-accused has preferred this application for suspension of the sentence and for bail.

2. Learned counsel for the applicant-accused submits that the prosecution case rests upon two dying declarations and even the parents of the deceased have not supported the prosecution case at all. Thus, except the allegations in those two dying declarations, there is no evidence about the ill-treatment being extended to the deceased by the applicant-accused and the co-accused for the reasons as mentioned in the dying declarations. Learned counsel submits that the dying declaration Exhibit 19 is the complaint-cum-dying declaration recorded by the Police Naik PW-4 Nagnath Dipke. Learned counsel submits that PW-4 Police Naik Nagnath Dipke has not recorded the complaint-cum-dying declaration of the deceased in her words. Learned counsel submits that so far as the dying declaration Exhibit 27 recorded by PW-5 Bhagwan Hambarde, who is working as Godown Keeper i.e. Naib Tahasildar, Nanded, the said dying declaration is in printed format and the endorsement of the concerned Medical Officer on it is also in printed form. Learned counsel submits that the applicant is a woman having two children below the age of 10 years. The applicant was on bail during trial. The applicant may be released on bail.

3. Learned APP has strongly resisted the application on the ground that both the dying declarations are cogent, trustworthy, consistent and inspire confidence. The deceased has consistently made allegations against both the accused persons. According to her, co-accused Deepak had poured kerosene on her person and the present applicant had set her on fire with the help of match stick. Learned APP submits that considering the role attributed to the present applicant, who is wife of the brother of co-accused Deepak, she is not entitled to be released on bail by suspending the substantive part of the sentence.

4. We have carefully gone through the dying declaration Exhibit 19 and the second dying declaration Exhibit 27. The incident allegedly took place on 05.02.2018 at about 11.00 a.m. The first dying declaration Exhibit 19 was recorded at about 7.00 p.m. to 7.30 p.m. and the second dying declaration Exhibit 27 was recorded at 9.55 p.m. onward. Since the parents of deceased have not supported the prosecution case, *prima facie* it appears that there was no possibility of tutoring. Both the dying declarations are consistent on material part. The prosecution has proved both the dying declarations by examining the PW-4 Police Naik Nagnath

Dipke and PW-5 Godown Keeper Bhagwan Hambarde and also proved the endorsement of the Doctor by examining PW-7 Dr. Bhushan Wad. In view of the same, though the applicant was on bail during trial, considering the evidence in the form of the dying declarations before the trial court, we are not inclined to release her on bail pending appeal. Hence the following order.

ORDER

The Criminal Application is hereby dismissed.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)