

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.476 OF 2021

Sahebrao s/o. Barma Mudde,
 Age 60 years, Occu. Labour,
 R/o. India Nagar, Latur,
 Taluka and District Latur. .. Applicant

Versus

The State of Maharashtra
 Through the Police Inspector,
 Shivaji Nagar Police Station,
 Taluka and District Latur .. Respondent

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Mr. A. B. Jadhav, Advocate for the Applicant
 Mr. N. T. Bhagat, APP for the Respondent-State

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AND

CRI. APPLICATION/1165/2021 IN BA/476/2021

Swati d/o. Dashrath Dhotre,
 Age 22 years, Occu. Student (Part time job),
 R/o. India Nagar, Latur .. Applicant

Versus

1. The State of Maharashtra
 Through Police Inspector,
 Police Station, Shivaji Nagar,
 Latur, Taluka and District Latur
2. Sahebrao s/o. Barma Mudde,
 Age Major, Occu. Nil,
 R/o. India Nagar, Latur .. Respondents

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Mr. A. B. Jadhav, Advocate for the Applicant
 Mr. N. T. Bhagat, APP for the Respondent No.1 State
 Mr. A. B. Jadhav, Advocate for the Respondent No.2

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CORAM : MANGESH S. PATIL, J.

DATE : 22.06.2021

PER COURT :-

After filing of the charge-sheet in Crime No. 436 of 2020 registered with Shivaji Nagar Police Station, Latur for the offences punishable under Sections 302, 307, 452, 323, 504 and 506 read with Section 34 of the Indian Penal Code, the applicant, who happens to be one of the accused, is seeking bail under Section 439 of the Code of Criminal Procedure.

2. The First Information Report (FIR) has been lodged on the basis of first dying declaration of the deceased wherein she alleged that the family of the applicant and other accused are her neighbours. There was dispute between them. They were asserting a right and title to the property in which she was residing with her mother and daughter. On account of such enmity, the applicant and other accused entered into her house at about 10.30 p.m. on 16th December 2020, they started abusing and assaulting all the three ladies. It is alleged that one of them set her on fire.

3. She was shifted to Civil Hospital with 60% burns. Her one more dying declaration was recorded. Unfortunately, she died of the burn injuries on 21st December 2020.

4. On the basis of first dying declaration, the offence was registered. The applicant is arrested on 17th December 2020 and is now seeking bail.

5. I have heard learned Advocate for the applicant, learned APP as well learned Advocate for the daughter of deceased, who has filed Criminal Application No. 1165 of 2021, which is allowed.

6. I have carefully gone through the papers.

7. It appears that there are two dying declarations, first has been treated as FIR on the basis of which the offence is registered. As can be seen the deceased in the first dying declaration states about the applicant having accompanied the other three accused Gopal, Rohidas and Govind. Conspicuously in the second dying declaration she has attributed allegations against other accused also by stating that even they had accompanied these four accused. Be that as it may, in both these dying declarations the applicant has been specifically named and stated to have accompanied his brothers. Apparently no weapon was carried by them. The dying declarations state that it is the accused Gopal and Govind have set her on fire with the help of a gas stove. Though there are allegations against the applicant about having assaulted the mother and the daughter of the deceased, no specific role is attributed to the applicant so far as the incident in which Gopal and Govind set her on fire.

8. Same is the case with statements of prime witnesses, namely daughter and mother of the deceased. Though they have been unanimous in attributing the applicant with assault on them, they have not stated about he having played any role in setting the deceased on fire.

9. Considering the all above facts and circumstances, it is a fit case where the applicant deserves to be released on bail.

10. The Bail Application is allowed. The applicant - Sahebrao s/o. Barma Mudde shall be released on bail in Crime No. 436 of 2020 registered with Shivaji Nagar Police Station, Latur for the offences punishable under Sections 302, 307, 452, 323, 504 and 506 read with Section 34 of the Indian Penal Code, on his executing a personal recognizance for an amount of Rs.50,000/- (Rupees Fifty Thousand only) and furnishing a solvent surety in the like amount subject to following conditions -

- (a) He shall not tamper the evidence or influence the witnesses,
- (b) He shall not indulge in any criminal activity.

11. Bail before the trial Court.

(MANGESH S. PATIL)
JUDGE