

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 633 OF 2021

Manish Ashok Bendwal
Applicant

Versus

The State of Maharashtra

Respondent

Mr. Satej S. Jadhav, Advocate for the applicant.
Mr. S.D. Ghayal, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.
DATE : 12th October, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. It is the prosecution case that the deceased Meenakshi was the wife of the applicant. Their marriage was performed in the year 2013. On 13th June, 2019, the applicant had come to village Pachora with his auto rickshaw. Both of them left for Jalgaon at 8.00 pm. The applicant asked the deceased as to whether she had brought money from her parents to which she answered in the negative. Thereupon, the applicant beat the deceased in the auto rickshaw. At 12.00 in the night, both of them reached their home at

Jalgaon. Applicant picked up quarrel with the deceased in the house also. Thereafter, the applicant poured diesel on the person of the deceased and set her on fire. The deceased came out of the house screaming. Thereafter, she was admitted in Apex Asian Critical Care Hospital, Jalgaon by the applicant. From there, she was shifted to Civil Hospital, Jalgaon.

3. On the basis of Dying Declaration given by the deceased, First Information Report was registered under Section 307, 498A, 323, 504 read with Section 34 of the Indian Penal code. The deceased died on 3rd July, 2019. Therefore, the offence was converted into Section 302 of the Indian Penal Code.

4. Heard Shri Jadhav, learned counsel for the applicant and Shri Ghayal, learned APP for the State.

5. Learned counsel Shri Jadhav submits that there are four Dying Declarations which are inconsistent with each other. In the private hospital i.e. Apex Asian Critical Care Hospital, Jalgaon, the deceased gave Dying Declaration that she died because of stove explosion. He submits that the second Dying Declaration is dated 1st

July, 2019 recorded by ASI, Jalgaon City Police Station. In this Dying Declaration, the deceased implicated the applicant to be the author of the crime. Third Dying Declaration is also of even date which was recorded at 10.15 pm. He submitted that in this Dying Declaration the deceased had stated that she got burn injuries because of fall of oil. Fourth Dying Declaration is recorded while giving history in the Civil Hospital, Jalgaon. He submits that in Civil Hospital, Jalgaon, while recording history it is stated that the deceased sustained burn injuries because of stove explosion. Learned counsel Shri Jadhav submits that all these Dying Declarations are inconsistent with each other. Therefore, the applicant is entitled to be released on bail.

6. Learned APP Shri Ghayal submits that there is no inconsistency in the Dying Declarations. He submits that in the history recorded in Apex Asian Critical Care Hospital, Jalgaon, there is nothing on record to show that it was the history given by the patient herself. The history given was by the husband. He further submits that in the second Dying Declaration, the deceased has specifically implicated the applicant. He submits that she has given detailed account of the incident in the Dying Declaration on the basis

of which First Information Report came to be lodged. He further submits that in answer to question No. 8 in the third Dying Declaration, the deceased has stated that the incident took place because of fall of oil but in answer to question No. 10, she has stated that it was done by her husband as her mother-in-law stated that she is not a good natured person and the applicant should desert her. He submits that the fourth Dying Declaration is not inconsistent. In the fourth Dying Declaration also, while recording history, it is mentioned as burn due to stove. The medical papers of Civil Hospital, Jalgaon, do not show that the history was given by the deceased. Learned APP further submits that spot panchanama does not show that there was stove explosion. Stove is there and it is perfectly in good condition. He, therefore, prays for rejection of the application.

7. Charge-sheet is filed. The incident took place on 30th June, 2019. The deceased was immediately shifted to the hospital. Case papers of Apex Asian Critical Care Hospital, Jalgaon, are produced on record which indicate that the deceased sustained injuries of thermal burn at home at around 9.15 am of 30th June, 2019 due to accidental explosion of stove while cooking. Papers do

not show that the history was given by the husband or any other relative of the husband. Therefore, at this stage, it can be inferred that this declaration was given by the deceased herself. Second Dying Declaration is dated 1st July, 2019. It was recorded by the Sub-Inspector between 9.30 pm and 10.10 pm. In this Dying Declaration, she implicated her husband/applicant. She stated in this Dying Declaration that the applicant poured diesel on her person and set her on fire. Third Dying Declaration is recorded by the Executive Magistrate between 10.15 pm and 10.28 pm in which the deceased stated that the incident took place because of fall of oil. In answer to the question as to on whom she had suspicion, she stated that it was done by her husband. The fourth Dying Declaration is recorded in the Civil Hospital, Jalgaon, xerox copies of which are produced by the learned APP because of the order passed by this Court. They show that the deceased sustained burn injuries by stove while cooking at home.

8. Apparently, there are four Dying Declarations. Out of them, two are absolving the applicant and two are implicating the applicant. During trial only it will be clear whether there is any consistency in these Dying Declarations. This position will be clear

only after recording of evidence. In view of this, case for bail is made out. Hence, the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.75,000/- (Rs. Seventy Five Thousand only) with one solvent surety in the like amount in connection with Crime No. 89/2019 registered with Jalgaon City Police Station, Jalgaon, for the offences punishable under Sections 302, 307, 498(A), 323, 504, 109 read with Section 34 of the Indian Penal Code.
- iii) Application is disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge