

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**925 BAIL APPLICATION NO.828 OF 2021**

Avinash @ Aavdya Sadish Kale  
Age: 24 years, Occu.: Agri.,  
R/o. Walunj Pargaon, Tq.Nagar,  
Dist.Ahmednagar. ..Applicant

VERSUS

The State of Maharashtra,  
For Parner Police Station,  
Tq.Parner, Dist.Ahmednagar. ..Respondent

...  
Advocate for Applicant : Shri Amol S. Gandhi  
APP for Respondent : Shri S.D.Ghayal

...  
**CORAM : M.G.SEWLIKAR, J.**

**DATE: 14<sup>th</sup> October, 2021**

**PER COURT:-**

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.301 of 2018, registered with Parner Police Station, District Ahmednagar, under Sections 302, 307, 201, 504, 506 read with Section 34 of the Indian Penal Code.

2. Facts in brief are that the deceased was the wife of Ritesh. Applicant is the cousin of Ritesh (son of sister of mother of the deceased). About two months before, the deceased had paid Rs.2,000/- as loan. On demand, brother of deceased by the name of Pravin Kale paid Rs.2,000/- to her and went to mountain

Shambho where accused No.2 - Sadish Kale is residing. The deceased had gone to tent of accused No.2. Both applicant and accused No.2 were there. Both applicant and accused Sadish started abusing in filthy language to the deceased and her brother Pravin. Applicant Avinash Kale poured petrol on the deceased and set her on fire. The deceased was immediately shifted to Dr.Kokare's Hospital at Shirur. Since she was not admitted there, she was taken to City Care Hospital, Ahmednagar.

3. During the admission she gave dying declaration to Police Head Constable, Tofkhana Police Station, which was treated as an FIR on the basis of which crime under Section 307, 201, 504, 506 read with Section 34 of the Indian Penal Code vide Crime No.301 of 2018 came to be registered. The deceased passed away on 9<sup>th</sup> October, 2018. Thereafter, offence was converted into Section 302 of the Indian Penal Code.

4. Heard Shri A.S.Gandhi, learned counsel for the applicant and Shri S.D.Ghayal, learned APP for the respondent-State.

5. Shri Gandhi, learned counsel for the applicant submits that there is variance between the dying declarations. He submits that the first dying declaration was recorded by the Head

Constable. Second dying declaration was recorded by the Executive Magistrate a day later. He submits that first dying declaration is a detailed declaration whereas second dying declaration is a cryptic dying declaration. In the first dying declaration, she has mentioned about payment of Rs.2,000/- by the brother of the deceased to the deceased. He further submits that in both the dying declarations, no motive is alleged. He further submits that in the first dying declaration, entire role is attributed to applicant whereas in second dying declaration accused Sadish Kale is also implicated. He submits that in the first dying declaration Sadish Kale was shown to be merely present at the scene whereas in second dying declaration it is stated that both Sadish Kale and the applicant poured petrol on the deceased and applicant set her on fire by lightening matchstick. He further submits that in the spot panchanama, there is no mention of matchstick nor any evidence of presence of petrol is shown. He further submits that statement of mother of the deceased has been recorded. He submits that she does not support the case of the prosecution in its entirety. He, therefore, prayed for releasing the applicant on bail.

6. Shri S.D.Ghayal, learned APP for the respondent-State objected to release the applicant on bail.

7. First dying declaration is dated 18<sup>th</sup> September, 2018. In this dying declaration, it is clearly mentioned that the applicant poured petrol on the deceased and he set the deceased on fire. Second dying declaration also implicates the applicant. The only variance is that first dying declaration does not mention role of accused No.2 whereas second dying declaration mentions the role of accused No.2 of pouring of petrol on the person of the deceased. This variance is not so material as to go to the root of the matter. Both the dying declarations are consistent so far as role of the applicant is concerned. In addition to this, the deceased had given oral dying declaration to her mother Kavita Kale. In this dying declaration also she has implicated applicant as the person, who had set the deceased on fire. Having regard to the voluminous evidence against the applicant, I am not inclined to release the applicant on bail. In view of this, application is rejected.

8. 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**