

1

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

**CRIMINAL APPLICATION NO. 1583 OF 2021
IN
CRIMINAL APPEAL NO. 359 OF 2021**

Maruti S/o Arjun Thokal

... Applicant
(Ori. Accused)

Versus

The State of Maharashtra
and another

... Respondents

....

Mr. N.B. Narwade, Advocate for the Applicant
Mr. Shashibhusan P. Deshmukh, APP for Respondent No.1 /
State
Mr. S.R. Andhale, Advocate for Respondent No.2.

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th OCTOBER, 2021

PER COURT:-

1. Pending Criminal Appeal No. 359 of 2021 preferred against the judgment and order passed by the learned Additional Sessions Judge, Ahmednagar dated 08.07.2021 in Sessions Case No.237 of 2016 convicting thereby the applicant/ original accused for having committed the offence punishable under Section 302 of IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs. 50,000/-, in default to

suffer R.I. for six months, and also convicting him for the offence punishable under Section 506 of IPC and sentencing him to suffer two years imprisonment and to pay a fine of Rs.5,000/-, in default to suffer R.I. for one month, the applicant/original accused has preferred this application for suspension of substantive part of the sentence and for bail.

2. The learned counsel for the applicant/original accused submits that the prosecution case entirely rests upon dying declarations of deceased and there is no direct evidence in this case. Learned counsel submits that it is a case of multiple dying declarations. The incident had taken place on 24.03.2016. Deceased Pratiksha had sustained burns, and therefore, she was shifted to City Care Hospital, Ahmednagr. The applicant is the distant cousin of deceased Pratiksha. Learned counsel submits that on 24.03.2016 itself, in City Care Hospital, Ahmednagar, two dying declarations came to be recorded. PW-7 ASI Mohan Laxman Gajare has recorded dying declaration (Exhibit 37) and on the same day, the Naib Tahasildar has recorded the dying declaration of deceased Pratiksha (Exhibit 61). In both dying declarations, deceased Pratiksha had stated that she sustained burns accidentally. Learned counsel submits that, however,

third dying declaration of deceased Pratiksha was recorded when she was shifted to Apex Hospital, Ahmednagar and it was recorded two days after the incident i.e. on 26.03.2016, wherein for the first time deceased Pratiksha had made allegations against the applicant/original accused that he had poured kerosene on her person and set her on fire. Learned counsel submits that the trial Court has not considered the possibility of tutoring while recording the third dying declaration and even the second dying declaration (Exhibit 61), which came to be recorded by the Naib Tahasildar is also not considered. Learned counsel submits that the applicant/original accused was on bail during the trial. Learned counsel for the applicant submits that though the applicant/original accused is ready to deposit the fine amount, the same was not accepted before the trial Court since the trial Court has sent the Record and Proceedings to this Court. The learned counsel for the applicant thus seeks permission to deposit the fine amount before this Court.

3. Learned APP assisted by Advocate Mr. S.R. Andhale, submits that the prosecution has not relied upon the dying declarations at Exhibit 37 and Exhibit 61, respectively. However, the defence has admitted those dying declarations,

and therefore, even without examination of the Naib Tahasildar, the said dying declaration came to be exhibited as Exhibit 61. Learned APP submits that dying declaration at Exhibit 54, which is recorded at Apex Hospital, Ahmednagar by PW-7 ASI Mohan Gajare is the only authentic dying declaration and the trial Court has rightly placed reliance on it. Learned APP submits that even during the course of recording of the first dying declaration (Exhibit 37) at City Care Hospital, Ahmednagar, the applicant-accused was present near the deceased and it is admitted by PW-7 Mohan Gajare that she was in the frightened state of mind at that time.

4. It is a case of multiple dying declarations and there is a glaring inconsistency between three dying declarations. In the first two dying declarations recorded on the date of incident, i.e. on 24.03.2016, deceased Pratiksha had stated about sustaining burns accidentally. Whereas, in the third dying declaration, which is recorded two days after the incident, deceased Pratiksha had made allegations against the applicant/original accused. It is for the learned APP to make appropriate submissions during the hearing of the appeal as to whether the first two dying declarations can be considered, when the

prosecution has not placed reliance on it. However, the applicant/original accused was on bail during the course of trial. In view of the same, we proceed to pass the following order:-

ORDER

- (i) The criminal application is hereby allowed.
- (ii) Pending the Criminal Appeal No. 359 of 2021 preferred against the Judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 08.07.2021 in Sessions Case No. 237 of 2016, substantive part of the sentence is hereby suspended and till then, the applicant/original accused - Maruti S/o Arjun Thokal be released on bail on furnishing personal bond of Rs. 20,000/- (Rupees Twenty Thousand) with one solvent surety of the like amount.
- (iii) The applicant is permitted to deposit the fine amount before this Court.
- (iv) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE