

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

**CRIMINAL APPLICATION NO.2053 OF 2022
IN
CRIMINAL APPEAL NO.459 OF 2022**

- | | | |
|----|--------------------------|---------------|
| 1. | Gajanan Maroti Raut, | |
| 2. | Shobhabai Gajanan Raut | ..Applicants |
| | Vs. | |
| | The State of Maharashtra | ..Respondents |

Mr.Satej S. Jadhav, Advocate for applicants
Mr.R.B.Bagul, APP for respondent

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.
DATE : NOVEMBER 23, 2022**

ORDER :-

This is an application under Section 389 of the Code of Criminal Procedure. Vide judgment and order dated 27.05.2022 passed by learned Addl. Sessions Judge (Fast Track Court), Hingoli, in Sessions Case No.6 of 2016, the applicants have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- with default stipulation.

2. Heard learned counsel for the parties. Perused the impugned judgment and the evidence relied on.

3. Learned counsel for the applicants would submit that the applicants were on bail, pending trial. Applicant no.1 is brother-in-law, while applicant no.2 is sister-in-law (wife of applicant no.1) of deceased – Rekha. The husband and parents-in-law of the deceased were also prosecuted. The husband has been acquitted. The parents-in-law passed away, pending prosecution. According to learned counsel, the case is based on the dying declaration made by the deceased to a Police Head Constable. The prosecution did not lead any evidence in proof of veracity of the dying declaration. According to him, the applicants were residing separately. There is no evidence to indicate of there being a quarrel over fetching of water of the applicant's bore-well. According to him, it will take time for hearing of the appeal. He, therefore, urged for allowing the application.

4. Learned APP would, on the other hand, submit that a dying declaration is a substantive piece of evidence. Same has been duly proved by the evidence of the Police Head Constable, who recorded it. The Medical Officer was also examined to say that the deceased was fit, mentally and physically as well, to make the dying declaration. According to him, the trial court has passed a well-

reasoned order. At the most, hearing of the appeal may be expedited. He, therefore, urged for rejection of the application.

5. Considered the submissions advanced. The deceased – Rekha suffered burns on 03.10.2015 at about 8.00 p.m. and succumbed thereto at 01.00 in the midnight. Applicant no.1 is brother-in-law of the deceased and applicant no.2 is his wife. The deceased made dying declaration to the Police Head Constable (PW 5 – Pramod). The dying declaration reads – at about 08.00 p.m. on 03.10.2015, the applicants doused the deceased with kerosene and set her ablaze. Her husband was not at home. He was at his shop. The reason behind setting the deceased ablaze was that the deceased fetched water of the applicants' bore-well.

6. The deceased died at 01.00 in the midnight on the next day, i.e. 04.10.2015. It is now known as to why an attempt was not made to have her dying declaration recorded by Executive Magistrate. The dying declaration, relying on which the applicants have been convicted, bears endorsements of the Medical Officer, indicating the deceased to have been fit to make statement, before and after recording thereof. There appears some overwriting in both these endorsements. The deceased did not distinguish the role of

the applicants in setting her ablaze. If her dying declaration is to be accepted, it has to be presumed that both the applicants poured kerosene on her person at one and the same time and both of them ignited as well.

7. The applicants were on bail, pending trial. One of the applicants is a woman. It will take time for the appeal to come up for hearing by its turn. We are, therefore, inclined to allow the application.

8. Hence, the following order:-

(i) The application is allowed;

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed vide judgment and order dated 27.05.2022 passed by learned Addl. Sessions Judge (Fast Track Court), Hingoli, in Sessions Case No.6 of 2016, to stand suspended. The applicants be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

[R. M. JOSHI, J.]

[R.G. AVACHAT, J.]