

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2117 OF 2022
IN APEAL/11/2020 WITH APEAL/11/2020

TUKARAM S/O. KISANRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent No.1/State : Mr. R. V. Dasalkar
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CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.

DATE : 14th JULY 2022.

Per Court :

1. This is an application for bail, pending appeal. The Applicant/Appellant was convicted for commission of offence under Section 302 read with 34 of the Indian Penal Code (I.P.C. for short) and was sentenced to suffer rigorous imprisonment for life. The allegations against him, are that he had committed murder of his wife by setting her on fire on 20.11.2016. His mother poured kerosene on the deceased. His wife died on 25.11.2016. The Applicant was arrested on 24.11.2016 and since then he is in custody.

2. Heard learned Counsel for the parties.

3. Learned Counsel for the Applicant submitted that there are three dying declarations. The first is recorded by way of medical history to doctor. The second dying declaration is recorded by the PSI, who is examined as PW-17 and the third dying declaration is recorded by Naib Tahsildar who is examined as PW-14. PW-17 - PSI recorded the dying declaration on 21.11.2016 between 07:30 to 08:30 pm. and PW-14 – Naib Tahsildar recorded the dying declaration after that between 10:00 to 10:30 pm. Learned Counsel for the Applicant submitted that there is important variance between these two dying declarations regarding the reason behind commission of this offence. He submitted that the Applicant himself had sustained burn injuries while extinguishing the fire which indicates that he had tried to save the deceased. The mother-in-law was also similarly convicted but she is granted bail. Therefore the Applicant deserves to be released on bail.

4. Learned APP relied on the same dying declarations and submitted that at this stage it is not permissible to go into the details about the

difference in versions mentioned in those two dying declarations. He submitted that even otherwise the inconsistency between those dying declarations does not go to the root of the matter.

5. We have considered these submissions and we have perused the important evidence of the witnesses PW-17 - PSI and PW-14 - Naib Tahsildar, who have recorded the dying declarations. The dying declarations are produced on record at Exhibit – 164 and 134. The postmortem reports are produced on record which show that the deceased had suffered 80% burns and cause of death is septicemic shock due to burns.

6. We have perused the evidence of these witnesses. The dying declarations were recorded. The endorsements of the doctor indicate that these witnesses had questioned the deceased about the nature of incident and the answer with reasonable certainty was given by the deceased. In the dying declarations recorded by the PSI, she has stated that in the night of 19.11.2016, her husband started quarrel on the ground that her father had not given good bed in the marriage. He

assaulted her. On the next day morning, the quarrel continued and mother-in-law also participated and poured kerosene on her. After that, the incident had taken place.

7. The other dying declarations recorded by Naib Tahsildar mentions that there was a quarrel on petty ground in the night of 19.11.2016 and it continued in the next morning and after that her mother-in-law poured kerosene and the Applicant lighted fire by using matchstick. In that dying declaration, she has mentioned that the incident had taken place on the outer platform of the house. Learned Counsel for the Applicant therefore submitted that the place of offence is different in both the dying declarations. The reason for quarrel is also different. This differentiation is little difficult to accept at this stage of consideration for grant or refusal of bail. The main incident of pouring kerosene and setting her on fire at that particular time in that house, has remained consistent. The contention is that both these dying declarations were recorded after she had an opportunity to meet relatives can be considered during final hearing stage. At this stage these dying declarations are quite incriminating.

8. In this view of the matter, at this stage we find sufficient material against the Applicant. The offence is serious. Therefore, we are not inclined to grant relief to the present Applicant. The application is rejected.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

Najeeb...