

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

BAIL APPLICATION NO.970 OF 2022

Sushilsing s/o. Ratnaprakashsing Thakur ..Applicant

Vs.

The State of Maharashtra ..Respondent

Mr.S.S.Panale, Advocate h/f. Mr.S.S.Dambe, Advocate for applicant
Mr.N.T.Bhagat, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 04, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0046 of 2022 registered with Taluka Jalna Police Station, Jalna.

2. Heard learned counsel appearing for the parties.

3. The FIR has been lodged by the brother of the deceased on 29.01.2022. The incident took place on 23.01.2022 by 09.00 p.m. It is the case of the informant that his sister – Jayashree (deceased) had married the applicant about 18 years back. The couple was blessed

with two children. The applicant has been serving with Irrigation Department as a Driver. He is heavily addicted to alcohol. On the given date, there was birthday celebration at the house of the informant. Both the children of the deceased had come to his residence for birthday. The deceased and her husband (applicant) had, however, not come. The children told the informant that there was a quarrel between their parents (deceased and applicant) and they, had, therefore, not come.

4. Little past 09.00 p.m. on 23.01.2022, Jayashree suffered extensive burns (82%). She was, therefore, immediately rushed to the hospital. The informant, on having learnt the same, immediately rushed to the hospital. It is his case that the deceased - Jayashree had told him that on the given night, the applicant had come home drunk. He asked her to pay him money for drinking liquor. She refused. He, thereupon, told her that it was he, who was earning and providing money for their maintenance. Since the deceased refused to pay him money, he emptied kerosene bottle on her person. He dragged her to kitchen and set her on fire by means of lighter. In the hospital, statement of Jayashree was recorded by the

Police Constable. She narrated the same therein. However, based on the statement of the informant, FIR came to be registered on 29.01.2022.

5. Learned counsel for the applicant would submit that there is delay of six days in lodging of the FIR. In the medical papers, the history has been given as self-immolation. The dying declaration, allegedly, made to the police constable does not bear medical certificate indicating the deceased to have been conscious oriented to make a statement. According to learned counsel, the charge sheet has now been filed. It will take time for commencement and conclusion of trial. He, therefore, urged for grant of bail.

6. Learned APP would, on the other hand, submit that the applicant and the deceased were the only persons, who were present in the house when the incident took place. The deceased gave oral dying declaration to her brother (informant). Her statement has already been recorded by the police constable in the hospital. In the said statement, she alleged the applicant to have set her ablaze. He would further submit that the statements of

neighbors indicate that there was quarrel between the couple. Learned APP would further submit that there are statements of the children of the deceased and the applicant, which also suggest that there used to be frequent quarrels between the applicant and the deceased. He submits that it is a case of not more than 3-4 witnesses. The trial may be concluded within a short time. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. Perused the FIR. The incident took place on the night of 23.01.2022. The deceased was immediately rushed to Civil Hospital at Jalna. The medical papers prepared at Civil Hospital, Jalna, does not record any history. She was then shifted to Bembde Hospital, Aurangabad. Both the brothers of the deceased had accompanied her to Bembde hospital, Aurangabad. The informant had given history that the deceased poured kerosene on herself and set herself ablaze as the applicant was alcoholic and would harass her physically.

8. There are medical papers on record. Those have been issued by the Government Medical Hospital, Aurangabad. It was, initially, recorded therein it being a case of accident. Then the word

"accident" came to be replaced with the word "suicide". Again, in the M.L.C. papers of the Government Hospital, history has been recorded as self burns by 9.00 p.m. at home. Then there are medical papers dated 24.01.2022, wherein the informant is stated to have given history of suicidal burns.

9. True, the statement of the deceased has been recorded by Police Constable, wherein the deceased has stated to have been set ablaze by the applicant. The said statement does not bear medical certificate indicating the deceased to have been conscious oriented to make a statement. True, the same is not mandatory.

10. As such, in the papers of investigation, two theories have been made out. One is the case of the applicant to have set on fire his wife (Jayashree), while, secondly, in the medical papers, the informant gave theory as a case of suicide.

11. Learned APP brings to the notice of this Court the certificate dated 24.01.2022, indicating the Doctor to have certified her to be fully conscious to make a statement. Said certificate is on a loose sheet.

Learned counsel for the applicant brings to the notice of this Court another certificate, indicating that the deceased was not conscious to make a statement by 02.30 p.m. on 24.01.2022.

Without observing anything on merits of the matter, suffice it to say that there are two self-contradictory propositions coming on record. One is of murder and another one is of suicide. The same can only be ascertained during trial of the case.

12. In view of the above, the Court is inclined to grant the applicant bail. Hence, the following order:-

- (i) The application is allowed.
- (ii) The applicant be released in connection with Crime No.0046 of 2022 registered with Taluka Jalna Police Station, Jalna, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence in any manner.

[R.G. AVACHAT, J.]