

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

**957 CRIMINAL APPLICATION NO.3259 OF 2021
IN CRIMINAL APPEAL NO. 675 OF 2021**

SHAHAJI ASHRUBA FALAKE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for the Applicant : Mr. N. L. Jadhav
APP for Respondent -State : Mr. S. D. Ghayal
...

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 10th FEBRUARY, 2022.

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ORDER : (PER : SANDIPKUMAR C. MORE, J) :

1. Heard both sides.
2. The applicants, who are respective accused nos. 1 and 2 in Sessions Case No. 87 of 2016, have preferred this application for suspension of their sentence and to release them on bail during pendency of their appeal.
3. Learned counsel for the applicants submits that the applicants are poor labourers and seasonally employed as sugar-cane cutting labourers. If they are not released on bail, their respective families would face starvation. He further submits that the applicants /

accused have been convicted on the basis of multiple dying declarations of the deceased by the learned trial court without any corroboration. He also submits that the learned trial court, despite contradictions and discrepancies in the dying declarations, convicted them by believing the same. Learned counsel for the applicants also submits that both the applicants were on bail during pendency of the trial of Sessions Case No. 87 of 2016.

4. On the contrary, the learned APP strongly opposed the application on the ground that the trial court has convicted the present applicants in the aforesaid sessions case mainly on the basis of dying declarations, which are already proved to be trustworthy, reliable and voluntary in nature. As such, he prayed for dismissal of the application.

5. Admittedly, under the judgment passed by the learned Sessions Judge, Beed in Sessions Case No. 87 of 2016 dated 07/12/2021 the applicants, who are accused nos.1 and 2 have been convicted for the offence punishable under Section 302 read with 34 of IPC and sentenced to suffer simple imprisonment for life and to pay fine of Rs.5,000/- each. Further it is apparent that during pendency of the trial of the said sessions case, the learned trial court had granted regular bail to applicant no.1 and the Single

Bench of this Court (Coram : A. M. Badar, J.) had granted regular bail to applicant no.2 in Criminal Application No.5023 of 2016 by order dated 10/10/2016.

6. Learned counsel for the applicants vehemently argued that the learned trial court believed the two dying declarations of the deceased i.e. wife of present applicant no.1, wherein she had made accusation of setting her ablaze against the present applicants. Learned counsel for the applicants by going through the evidence recorded by the learned trial court, tried to show as to how there were material contradictions and discrepancies in both the dying declarations by pointing out evidence of witnesses on the same. However, the submissions of the learned counsel to that effect need to be considered at the time of final argument of their appeal. After going through the judgment, it is apparent that the learned trial court has convicted the applicants on the basis of two dying declarations; one is recorded by P.W.3 Pandharinath Kisanrao Sasane i.e. Police Head Constable just after admission of the deceased in Civil Hospital, Beed. Moreover, the other dying declaration appears to be recorded by Special Executive Magistrate P.W.5 Vilas Vitthalrao Telang of Tahsil Office, Beed. On perusal of both these dying declarations, which are at Exhibit-80 and 98, it is evident that the deceased is consistent on the point that applicant

no.1 poured kerosene on her person and applicant no.2, who is her brother-in-law, set her ablaze with help of match stick. Under such circumstances, considering the prima facie material against the applicants in the form of two consistent dying declarations of the deceased, we are not inclined to suspend their sentence during pendency of appeal. The submissions as regards the doubtful circumstances while recording those dying declarations made by the learned counsel for the applicants, can be considered at the time of final argument. Hence, we pass following order.

O R D E R

The criminal application is hereby rejected and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-