

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO.420/2022

Mukesh s/o Dharmaji Bambole

...Versus...

State of Maharashtra, Through its Police Station Officer, Police Station
Gadchiroli, District : Gadchiroli

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri R.R. Vyas, Advocate for applicant
Shri A.R. Chutke, APP for non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 04/05/2022

1. Heard Shri Vyas, learned Counsel for the applicant and Shri Chutke, learned Additional Public Prosecutor for the non-applicant/State.
2. The applicant has been arraigned for the offence punishable under Sections 302, 498-A r/w 34 of Indian Penal Code in Crime No.785/2021 registered with Police Station Gadchiroli, District Gadchiroli. The incident is dated 25/09/2021 at 8:30 p.m. The First Information Report (FIR) has been lodged on 26/09/2021, on which date, the applicant has been arrested. The victim/Chandrakala, who was the wife of the applicant passed away on 15/10/2021.

3. Shri Vyas, learned Counsel for the applicant submits that the applicant is not involved in the said offence, rather according to him, the record would indicate that the applicant was instrumental in rescuing the victim and taking her to the hospital for treatment. He further relies upon the dying declaration of the victim, which also does not implicate the applicant as well as the statements of the neighbours, which substantiate this position and therefore, contends that the applicant is entitled for bail.

4. Shri Chutke, learned Additional Public Prosecutor for the non-applicant/State does not dispute, that the dying declaration dated 25/09/2021 of Chandrakala attributes the pouring of the kerosene upon her person and lighting fire to the mother of the applicant and not to the applicant. He, however, opposes the application contending that the applicant was on the spot and therefore, was equally responsible for the demise of the victim.

5. The incident is dated 25/09/2021 on which date, as per the dying declaration of the deceased Chandrakala, her mother-in-law Saraswati is claimed to have poured kerosene on her person and set her on fire. The instant dying declaration does not attribute any action on part of the applicant. The dying declaration also demonstrates that the applicant was instrumental in dousing the fire by pouring

water on her person and taking her to the Public Health Centre, Porla and then to the Government Hospital, Gadchiroli, where she breathed her last. The statement of Kantabai, mother of the deceased, dated 28/09/2021, indicates that when she had met her daughter Chandrakala at the Government Hospital, Gadchiroli on account of she having sustained more than 36 % burn injuries, she was not in a position to speak, however, the statement of Mangesh Rohankar, the brother of the deceased dated 26/09/2021, which is earlier in point of time, states that when he had met his sister Chandrakala at Government Hospital, Gadchiroli, she had told him that her mother-in-law Saraswati had set her on fire by pouring kerosene. Though the applicant is also claimed to be involved in the said incident, however, such involvement is not indicated from the dying declaration as well as the statement under Section 164 of Cr.PC. of Tina Arun Patil, the daughter of the deceased from her first marriage, recorded on 30/10/2021. The statements of the neighbours Kerwanta Bambode, Jayashree Khobragade, Gauri Thakare and Sanju Nitin Wasnik all indicate that the applicant had no role to play in the said incident but was instrumental in dousing the fire by pouring water upon Chandrakala and taking her to the hospital, considering which, a case for bail is made out. Hence, the following order.

ORDER

(i) The criminal application is allowed. The applicant/Mukesh s/o Dharmaji Bambole be released on bail in Crime No.785/2021 registered with Police Station Gadchiroli, District Gadchiroli for the offence punishable under Sections 302, 498-A r/w 34 of Indian Penal Code, upon his furnishing P.R. Bond in the sum of Rs.75,000/- (Rupees Seventy Five Thousand Only) with two solvent sureties in like amount.

(ii) The applicant shall not directly or indirectly make any attempt to influence the prosecution witnesses or otherwise tamper with the evidence.

(iii) The applicant shall remain present on each and every date before the learned Sessions Court during the course of trial and shall ensure that the trial is not protracted on his count.

(iv) Violation of any of the above conditions shall result in cancellation of bail.

(AVINASH G. GHAROTE, J.)

Wadkar