

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

CRIMINAL APPLICATION (APPA) NO.92/2022 IN
CRIMINAL APPEAL NO.55/2022

Bebi Bharat Shrungare

..VS..

State of Mah., thr.PSO PS Pinjar, Taluka Barshitakli, Akola

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

Court's or Judge's Order

.....
Shri Z.Z.Haq, Counsel for the Applicant.

Shri S.S.Doifode, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE &
AMIT B.BORKAR, JJ.

DATED : APRIL 13, 2022

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. Heard learned counsel Shri Z.Z.Haq for the applicant and learned Additional Public Prosecutor Shri S.S.Doifode for the State. Also, perused relevant evidence as well as documents which are relevant for consideration of the present application.

3. Deceased is one Sonu. She was daughter-in-law of the applicant. Incident in question occurred on 27.12.2012. Even, according to the prosecution, she died on 11.4.2013 in her matrimonial house, obviously after she was discharged from hospital. Postmortem report is at Exhibit-46. Reason for death given by Autopsy Surgeon is "Septicemic Shock due to Burn Injuries"

4. It appears that the prosecution case is based on dying declaration recorded by Naib Tahsildar Pooja Matole (PW1) and also on oral declaration given to Police Patil Vitthal Ingle (PW4) and Kailash Wankhede (PW6), father of the deceased.

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5. The doctor who has given fitness certificate could not be examined during trial because the doctor was no more. However, evidence of Pooja shows that before recording dying declaration the Naib Tahsildar herself satisfied about the fitness of the declarant.

6. In this view of the matter, law laid down by Constitution Bench of learned Single Judge in the case of Laxman vs. State of Maharashtra reported at AIR 2002 SC 2973 can be made applicable to the present case.

7. Be that as it may, as per dying declaration Exhibit-38, role attributed to the present applicant is that she poured kerosene and other co-accused Anita, who is absconding, set the deceased on fire.

8. The applicant is lady. Role attributed to her was that she poured kerosene. However, it is not prosecution case that is coming on record through Exhibit-28 that she ignited fire. Further, oral dying given to independent witness (PW4) in respect of the said aspect is found to be proved omission.

9. In view of the aforesaid, *prima facie*, we are of view that the applicant who is in jail can be released on bail. In the result, we pass following order:

ORDER

(1) The criminal application is allowed.

(2) Judgment and order of conviction dated 12.7.2021 passed by learned Additional Sessions Judge, Akola in Sessions Trial No.72/2015 convicting the applicant for offence punishable under Section 302 of the Indian Penal Code shall stand suspended during the pendency of the present appeal.

(3) The applicant be released on bail on her executing a P.R. in

the sum of Rs.5000/- with one solvent surety of the like amount.

(4) The applicant is directed to remain present before this Court at the time of final hearing of the appeal.

JUDGE

JUDGE

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WANKHEDE

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