

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

**905 CRIMINAL APPLICATION NO.3830 OF 2022
IN APEAL/108/2021**

**MANIKA DHONDIBA JOGDAND
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicants : Mr. R.V. Gore h/f. Gadegaonkar Bharat N.
APP for Respondents/State : Mrs. V.S. Choudhary
...

**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.
DATE : 1st March, 2023**

PC. :-

1. Present application has been filed for suspension of sentence and grant of bail to the applicant / appellant under Section 389 of the Cr.P.C. The applicant has been convicted in Sessions Case No.18/2016 by the Additional Sessions Judge, Kandhar, District Nanded on 27.11.2020. He has been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for three months for committing offence punishable under Section 302 of the I.P.C. It is alleged that the he has murdered his wife.

2. Heard learned advocate Mr. R.V. Gore h/f. B.N. Gadegaonkar for the applicant and Mrs. V.S. Choudhary the learned APP for the State.

3. With the able assistance of the learned advocate for the appellant and the learned APP we have gone through the paper book. The case is based on dying declaration (Exhibit-24) and three oral dying declarations to the parents and brothers. In order to prove dying declaration (Exhibit-24). the prosecution has examined PW4-Rohidas Harale. the then constable on duty at Government Hospital, Vishnupuri, Nanded and PW5-Dr. Satyajeet Aher the Medical Officer in Ward No.9 in Government Hospital, Vishnupuri, Nanded. At the stage when this Court is supposed to consider the *prima facie* evidence. it can be seen that there is endorsement to the dying declaration regarding fitness of the mental state of the deceased and also the reason as to why the thumb mark of the left foot was taken on the statement. The contents of the dying declaration have been stated by PW4-Rohidas Harale. The prosecution has also then examined PW10-Chinchole who had tried to extinguish the fire by pouring water and his presence appears to be not denied completely by the accused. As regards oral dying declarations are concerned those persons have been examined. Though. it is weak type of evidence yet if it is corroborating written dying declaration then definitely it would be considered at the time of final hearing. Learned advocate appearing for the appellant has tried to explain as to how the testimony of PW5-Dr.Satyajeet cannot be considered as a true account of the mental state of the deceased at the time of giving statement as he would submit that post mortem report as

well as the testimony of PW5-Dr. Satyajeet itself would clear that deceased had received 95% of the burn injuries and especially the injuries near her neck would not have allowed her to speak. Definitely it is part of the appreciation of evidence as post mortem report state that the percentage of the burns to head, neck and face is 6% but then PW5-Dr. Satyajeet has specifically denied that there were deep burn injuries to the neck of the deceased. In the dying declaration, it has been contended that the accused had demanded money from the deceased for drinking liquor and when she refused, kerosene was poured on her person. The spot Panchanama has been carried out and it is supported by the testimony of the spot Panch as well the Investigating Officer.

4. It has been also submitted on behalf of the appelllant that in his statement under Section 313 of the Cr.P.C. the appellant has stated that his step brother was given 2 acres of land, he himself is having 2 acres of land which they had inherited from their father. He and his step brother were having disputes regarding the distribution of the water and that one day he made agreement to sell the motor and the pipeline installed by the father to the step brother. Deceased disputed the said action on the part of the accused and even the step brother of the accused had uttered filthy words to the deceased. He submits that in the heat of the moment and exchange of words she had poured kerosene on herself and set her ablaze, he had tried to

extinguish the fire and in that process he had also sustained burn injuries. Therefore, it was a case of suicide but the relatives of the wife have given it a colour of murder and this fact has not been appreciated by the trial Court.

5. As regards the defence that has been taken by the accused in his statement under Section 313 of the Cr.P.C. he has not examined anybody to support his contention. No doubt there appear to be some documents showing that he had sustained burn injuries but the fact remains is that in the testimony of PW10-Chinchole, it was not extracted that when Chinchole had come to extinguish the fire he had seen accused taking part in extinguishing the fire. It has also come on record that the relatives of the deceased had taken her to the hospital, if accused was present there why he had not taken her to hospital is a question and this question has been left unanswered by him in his statement under Section 313 of the Cr.P.C. Suffice it to say that since the point has been raised it has been dealt, it would still be open for the accused to point out from any other evidence that his defence has not been properly considered but at this stage, we find that there are no grounds to release him on bail by suspending the sentence. He was never released on bail throughout the trial. Hence, the application stands rejected.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]