

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 4464 OF 2023
IN
CRIMINAL APPEAL NO. 194 OF 2018**

Rashtrapal Ananda Dhabe ... Applicant
Versus
State Of Maharashtra ...Respondent

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Mr. Aniket Vagal a/w Mr. Kunal Pednekar, Advocate for the Applicant.
Mrs. M.H. Mhatre, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 22nd DECEMBER, 2023.

P.C.:

1. This is an application for suspension of sentence and grant of bail during the pendency of Appeal. The previous application was withdrawn and disposed of vide order dated 5th March 2018.
2. The case of the prosecution is that there was quarrel between the applicant and the deceased. The deceased is the wife of the applicant. The first dying declaration of the deceased mentioned that she had suffered burn injuries accidentally on account of explosion of stove. The dying declaration was recorded by the Executive Magistrate in question answer format which was

followed by the statement recorded by Police on the same day which also does not implicate the applicant. The alleged incident had occurred on 8th January 2016. The aforesaid dying declaration was recorded on 8th January 2016. Supplementary statement of the deceased was recorded on 9th January 2016, wherein she has stated that there was quarrel between her and the accused. She poured diesel upon herself and during scuffle the diesel got sprinkled on her person. Accused lit the matchstick and she was set on fire. The accused went out and returned to house and tried to extinguish the fire. The victim was taken to hospital by accused and another person.

3. Learned Advocate for the applicant submitted that earlier application was withdrawn on 15th March 2018. Although the period of about 5 years has lapsed from the disposal of said application, the appeal could not be heard. The applicant is in custody for a period of about 8 years. The dying declarations relied upon by the prosecution are contradictory. In the first dying declaration, the applicant is not implicated, however subsequently there is improvement wherein overt-act of setting the victim on fire has been attributed to the applicant.

4. Learned A.P.P. submitted that there is sufficient evidence to

convict the applicant in the crime. Although in the first dying declaration the victim has stated that it was accidental case. The spot panchanama and recovery of stove does not indicate that there was any explosion of stove. What was sprinkled on the body of the victim is diesel. The second dying declaration attributed overt act to the applicant. The statements of the relatives of the deceased were recorded. Oral dying declarations were made to them.

5. The applicant is in custody for a period of about 8 years. The first statement of the victim was recorded by the Executive Magistrate wherein she has not implicated the applicant. The second statement was recorded by the Police Officer, in which the victim has purportedly stated that diesel was poured by her on her person and the accused had lit the matchstick. The dying declaration also indicates that there was quarrel between the accused and the victim and during this scuffle the diesel was poured on her person.

6. Considering the fact that there are contradictory dying declarations and the applicant is in custody for a period of about 8 years, case for suspension of sentence and grant of bail is made out.

ORDER

- i. Interim Application No.4464 of 2023 is allowed;

- ii. During the pendency of Criminal Appeal No.194 of 2018, the substantive sentence of imprisonment imposed vide Judgment and order dated 23.01.2018 passed by learned Sessions Judge, Nashik in Sessions Case No.99 of 2016 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant shall attend the concerned Police Station once in three months on first Saturday of the month till further order;
- iv. Interim Application stands disposed of accordingly.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)