

is submitted that, although the victim suffered burn injuries on 19th October 2023 and the documents on record show that she was conscious and oriented even when she was admitted to the hospital, her statement was eventually recorded on 30th October 2023 i.e. after gap of about 11 days, only hours before she expired. It is submitted that the theory of the Investigating Authority with regard to the animosity against the victim, may apply insofar as the co-accused is concerned, with whom she was allegedly having an extra marital affair, but insofar as the applicant is concerned, there is no material to show as to why the applicant would have accompanied the co-accused person for committing such a dastardly act. It is submitted that the applicant has already suffered incarceration from the date of his arrest and in absence of any material to link the applicant with the incident in question, the bail application may be allowed.

4. On the other hand, the learned APP strongly relies upon the statement of the victim recorded on 30th October 2023, after a specific endorsement by the treating Doctor that she was conscious and oriented at the time of giving such statement. It is submitted that the aforesaid statement, which then became the basis for registration of the FIR, clearly names the applicant as the person responsible for the act in question, along with the co-accused person. Reference is made to the statement of a neighbour and her husband about the manner in which the victim ran out after having suffered burn injuries at the hands of the accused persons.

Reliance is also placed on the statement of the husband of the victim, who has clearly stated that after being admitted to the hospital, the victim was not in a position to speak and as soon as she was able to speak on 30th October 2023, he informed the concerned persons and thereupon, the statement of the victim was recorded. It is submitted that the applicant belongs to the same village as the co-accused person. One of the witnesses has specifically stated about his absence from the place of work, during the time when the incident took place on 19th October 2023 and therefore, a strong *prima facie* case is made out against the applicant. On this basis, it is submitted that the application ought to be dismissed.

5. This Court has considered the rival submissions in the backdrop of the material placed on record. The copy of the entire charge-sheet is placed on record along with the application. Hence, the entire material upon which the prosecution would be relying, is available for perusal.

6. This Court finds the following factors in favour of the applicant.

- (a) At the time when the victim was admitted to hospital on 19th October 2023 at 1:30 p.m. in Lotus Hospital, it is specifically recorded that the patient was conscious and oriented. It was further recorded in the very same document that the victim suffered burns by kerosene, due to assault by

“unknown person”.

- (b) The documents further show that even on 20th October 2023, while still being treated at Lotus Hospital, at about 11:00 a.m., it was recorded that the victim had suffered 2nd degree burns due to kerosene and her vitals were stable. Yet, neither on 19th October 2023 nor on 20th October 2023, is there any indication that the victim took the name of the applicant and the co-accused person for the incident in question.
- (c) Subsequently, the victim was shifted to Kasturba Hospital (a Corporation Hospital), where she was treated till her death i.e. on 31st October 2023 at about 1:30 a.m. It is significant to note that even in the document recording the fact of her being admitted to the said hospital on 20th October 2023 till her death on 31st October 2023, it was stated that the victim was brought by her relatives with a history of homicidal burns by “unknown person – thief” on 19th October 2023 at about 12:00 p.m. at her home. This endorsement is after the statement of the victim was allegedly recorded by a Police Officer on 30th October 2023 at about 11:30 p.m. i.e. a few hours before her death.
- (d) It is also significant to note that the Doctor who endorsed on 30th October 2023 at 11:30 p.m., about the fact that the victim was conscious and oriented as also fit, to give

statement, was not called upon to give statement during the course of investigation. The statement of the said Doctor has not been recorded under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). Yet, he is shown as one of the witnesses intended to be examined by the prosecution at the time of trial. This is a discrepancy in the investigation that can inure to the benefit of the applicant.

- (e) In this context, there is some substance in the contention raised on behalf of the applicant that since the dying declaration was not recorded before the Magistrate and only before a Police Office, failure on the part of the Investigating Authority to record a specific statement of the said Doctor about the aforementioned statement on 30th October 2023 at 11:30 p.m. being recorded in his presence, can prove fatal for the prosecution.
- (f) The thrust of the case of the Investigating Authority appears to be that the co-accused person was having an affair with the victim, although she was a married woman, but, she had broken up her relationship with the co-accused person. On that basis, the co-accused person may have had a feeling of animosity to commit the said act of burning the victim. But, the material on record, *prima facie* falls short of establishing a link between the applicant and the incident in question. Even if the entire material is accepted, it is difficulty to understand that as to what motive the applicant could have

to participate in such an act. The mere fact that the applicant belongs to the same village as the co-accused person, cannot be a ground to claim that a *prima facie* case is made out against the applicant.

- (g) In this backdrop, the endorsement made in the record of Lotus Hospital on 19th October 2023 at 1:30 p.m. assumes significance, wherein it is recorded that the victim suffered burn injuries due to assault by “unknown person”. This appears to be inline with what is recorded in the document issued by Kasturba Hospital on 31st October 2023, after the victim expired, wherein it is recorded that the victim suffered homicidal burns by “unknown person-thief”. The statement of the neighbour about she having seen a person wearing particular clothes entering the apartment/complex where the victim resided, also refers to a single person. This material *prima facie* indicates that perhaps only one person could be said to be responsible for the aforesaid act. The entire motive and animosity being attributed to the co-accused, this is another factor that inures to the benefit of the applicant.

7. The aforesaid factors do make out a *prima facie* case in his favour and hence, this Court is inclined to allow the present application.

8. In view of the above, the application is allowed in the

following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0887 of 2023 dated 31st October 2023 registered at Narpoli Police Station, Dist. Thane, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall report to the Narpoli Police Station, Dist. Thane, on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

9. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be

cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

10. The application is disposed of.

11. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

12. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

MANISH PITALE, J.