

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

**INTERIM APPLICATION NO.1196 OF 2024
IN
CRIMINAL APPEAL NO.588 OF 2016**

Mrs. Indubai Ananda Chavan .. Applicant
vs.
The State of Maharashtra .. Respondent

Mr. Kedar J. Patil with Sakshi Kadam with Pratik Tare for the
Applicant.

Mr. Pankaj Deokar APP for the Respondent-State.

**CORAM : R. N. LADDHA &
SHYAM C. CHANDAK, JJ.**

DATE : 15th JULY, 2025

ORAL ORDER (PER S.C. CHANDAK, J.)

1) Present Application is filed by the Applicant for grant of
bail pending hearing and final disposal of the aforesaid Appeal.

Earlier, the Applicant had filed Interim Application
No.2661 of 2021 for grant of bail during pendency of the Appeal. Said
Application was withdrawn *vide* Court's Order dated 17/01/2023.

2) Heard Mr.Patil, the learned Counsel for the Applicant and
Mr.Deokar, learned APP for the Respondent-State.

3) By the Judgment and Order dated 08/07/2016, in Sessions Case No.246 of 2013, passed by the Court of the learned Additional Sessions Judge at Sangli, the Applicant i.e. the Original Accused No.2 and the son of the Applicant i.e. the Original Accused No.1 were convicted for the offence punishable under Section 302 and 34 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, with default stipulation.

4) The prosecution case is that, the deceased-Jyoti was the daughter of the first informant-Sarjerao Shirtode (P.W.2). Jyoti was married to Accused No.1 about three years prior to incident. After the marriage, Jyoti went to cohabit in the family of the accused. Thereafter, Jyoti gave birth to a male child 'Omkar', who was aged 1½ years at the time of incident. However, Accused No.1 and the Applicant were suspecting the fidelity of Jyoti and used to beat and abuse her. Therefore, on 4-5 occasions Jyoti had been to her parental house following which an understanding was given to both the accused to give good treatment to Jyoti.

5) It was alleged that on 29/08/2013, at about 9.20 a.m., Jyoti made a phone call to P.W.2 and informed him that both the

accused were beating her and asking to disclose the name of the person with whom she had illicit relations, although Jyoti denied having such relations. However, while leaving for work, Accused No.1 told the Applicant to ask Jyoti to give the name of that person, otherwise, set her on fire by pouring kerosene. Therefore, the first informant and his other relatives came to the house of Jyoti. At that time, Jyoti was lying on the floor with burn injuries. On enquiry, Jyoti disclosed that the Applicant poured kerosene on her person and set her on fire, at the instigation of Accused No.1. Thereafter, Jyoti was removed to Aditya hospital and admitted there.

6) Hence, P.W.2 filed a Report with the Miraj Rural police station, Sangli under Section 307 and 34 of I.P.C. Subsequently, a dying declaration (Exh.35) of Jyoti was recorded by Smt. Mangal Malap (P.W.4), the Executive Magistrate. Therein Jyoti narrated the incident as above. Then, she succumbed to her injuries. On completion of the investigation, the police submitted the charge-sheet against both the accused.

7) During trial, the prosecution examined seven witnesses and the defence examined two witnesses. Considering the oral and documentary evidence, the trial Court convicted and sentenced the

accused, as above.

8) Mr. Patil, the learned Counsel for the Applicant submits that at the time of the incident, the Applicant was aged 44 years and Jyoti was aged 22 years. The plastic Can from which kerosene was poured, had a very narrow opening. As such, a reasonable amount of time must have been taken by the Applicant to pour the kerosene, light a match-stick and then set Jyoti on fire. Certainly, during this entire act, both the hands of the Applicant must have been engaged. Yet, Jyoti made no attempt to resist the Applicant or to save herself from the impending danger. Additionally, the household articles kept in the room were at their proper places, which fact rules out the possibility of any scuffle or resistance. Till the date of the incident, there was no police complaint of cruelty by Jyoti. As such, the prosecution story of the murder is highly improbable. On the contrary, this could be a case of suicide.

9) He submits that, the evidence of the P.Ws. indicate that the close relatives of Jyoti were present at the time when the dying declaration was recorded. Therefore, there is a possibility that Jyoti was tutored to give the written dying declaration. He submitted that the medical evidence of P.W.3-Dr.Sonali Wetam indicates that there

were carbon soot particles in larynx, trachea and bronchi and it was congested by pus. The deceased suffered 90% burns. Therefore, it was highly impossible for her to give an oral and written dying declaration.

He submitted that P.W.4 deposed that the dying declaration (Exh.35) is in her handwriting. She admitted that the dying declaration (Exh.82) of one Komal Kolekar was also recorded by her, in another case. P.W.4 admitted her signature on the dying declaration (Exh.82). However, there is difference/discrepancy in the handwriting of the person who recorded these dying declarations. As such, it is doubtful that P.W.4 recorded the dying declaration (Exh.35).

Lastly, Mr. Patil submitted that at present, the Applicant is aged 56 years. Till 30/11/2023, she has undergone imprisonment for a total period of 12 years, 2 months and 16 days, with remission. The actual period of imprisonment undergone is 9 years, 4 months and 13 days. He submitted that even after 30/11/2023, the Applicant is in jail. Thus, the Applicant has undergone more than 10 years of imprisonment. Therefore, in view of decision in case of ***Saudan Singh vs. State of Uttar Pradesh***¹ the Applicant may be released on bail.

10) Mr. Deokar, the learned APP, on the other hand, submitted that there is sufficient material against the Applicant that

¹ (2023) 17 SCC 446

she committed the murder of Jyoti by setting her on fire. He produced a report dated 17/02/2025 submitted by a Police Inspector of Miraj Rural Police Station regarding the premature release of the Applicant, and submitted that when the Applicant was on parole leave, the Applicant's brother Sunil Shirtode had taken her to village *Uplavi*. P.W.2 is also residing in the same village. However, the Applicant would deliberately pass in front of the house of P.W.2 and look at him with animosity. Therefore, he was feeling bad. As such, there may be a possibility of a dispute between the rival parties if the Applicant is released on bail.

11) We have considered the rival submissions and perused the record.

12) After withdrawal of the Interim Application No.2661 of 2021 for bail, the Appeal is not listed for final hearing. Considering the pendency of the cases, the Appeal may take some time for final hearing. The report in respect of the premature release is not indicating exactly as to how the Applicant caused the instigation. The said report speaks of some dispute between the parties. But the nature of the dispute is not explained. It is not the case that the Applicant has misused the parole liberty. The Accused No.1 is on bail. The Applicant

is a woman aged 56 years. The Applicant is not likely to abscond. In the cited case, bail has been granted to the convicts who have undergone 10 years or more in jail. The learned APP has not disputed that the Applicant is in custody for 10 years.

13) In the case of *Ashok Pandurang Jadhav vs. The State of Maharashtra*, reported in *(2011) 4 AIR Bom R 10*, as alleged, the husband poured kerosene on the person of his wife from a Can and set her on fire. But it was not the case that the wife had been held by somebody else or had been tied. So, it was observed that it is difficult to see how she would remain quiet till the husband poured kerosene on her person and thereafter, set her on fire. The reaction of a person, as soon the person would realize that, kerosene is likely to be poured over that person's body, would be to an attempt to prevent the pouring of kerosene. Further, even thereafter, the victim would get the chance to escape or raise shouts, before the victim is actually set on fire. The injuries of the wife did not show any sign of resistance. There was no evidence to show that there was any scuffle. There was no evidence, or even a claim that the belongings in the house, where the incident took place, had fallen or thrown away, indicating of scuffle, fight or resistance. Therefore, the above circumstances were added to other

reasons to disbelieve the dying declaration.

14) In view of the above discussion and considering the rival submissions, we are inclined to grant bail to the Applicant, subject to conditions.

It is made clear that our aforesaid observations are made only for the purpose of deciding this bail Application. All these aspect will have to be considered finally at the stage of hearing of the aforesaid Appeal.

15) Now, we pass the following order :-

ORDER

- (i) Applicant-Original Accused No.2 be released on bail in C.R.No.124 of 2013 registered with Miraj Rural Police Station, Sangli being Sessions Case No.246 of 2013, on her furnishing P.R. bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (ii) After her release from Jail and during pendency of the present Appeal, the Applicant shall attend Miraj Rural police station, Sangli on first Monday of every month from 10.00 am to 12.00 noon.
- (iii) During the pendency of the Appeal, the Applicant shall not visit village Uplavi, Taluka Tasgaon, District Sangli.

- (iv) In case of three consecutive defaults in complying with the aforestated conditions, the prosecution is at liberty to file an Application for cancellation of bail.
 - (v) Applicant shall inform her prospective residential address to the concerned Police Station and shall inform the concerned Police Station or any change in her residential address or her mobile number, on which she can be contacted.
 - (vi) Applicant shall make herself available at the time of final hearing of the Appeal.
- 16) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(R. N. LADDHA, J.)