

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

***INTERIM APPLICATION NO.3003 OF 2024
IN
CRIMINAL APPEAL NO.866 OF 2024***

Swaruplal @ Dushkalya Mokashya Kale
and Anr

Applicant /
.... Appellant

Versus

State of Maharashtra

.... Respondent

.....

Mr.Santosh J. Gaikwad, Advocate for the Applicant/Appellant.

Ms.Geeta P.Mulekar, APP for Respondent – State.

.....

***CORAM : SARANG V. KOTWAL &
MANJUSHA DESHPANDE, JJ.***

DATED : 26.06.2025

P.C. :

1 This is an Application for bail pending the Applicants' Appeal before this Court. The Applicants were the original accused Nos.3 and 2 before the Additional Sessions Judge, Baramati, Pune, in Sessions Case No.162 of 2019. There was one more accused i.e. accused no.1 Pangari Dushkalya Kale @ Pangari Sunil Shinde, but she was absconding, and, therefore, only the present Applicants faced the trial. At the conclusion of

Rajeshri Aher

trial, both of them were convicted for the offences punishable under Sections 302 and 504 read with Section 34 of Indian Penal Code (hereinafter referred to as, "IPC", for short). The major sentence imposed on the Applicants was life imprisonment. Accused No.3-Swaruplal Kale was arrested on 08.03.2019 and accused No.2-Sunil Shinde was arrested on 20.01.2019, and since then both of them are in custody.

2. The prosecution case is that, the absconding accused Pangari was having suspicion that her husband, accused No.2 Sunil is having illicit relations with the deceased. Out of this enmity, on 13.01.2019, all the accused came together, stopped the deceased Hina. Accused No.1 Pangari picked up quarrel with her. The other two accused held her and poured Kerosene on her person and set her on fire. After that they ran away.

3. The deceased succumbed to her injuries on 20.01.2019, having suffered 53% burn injuries.

4. The learned counsel for the Applicants submitted that the spot of incident was in a crowded locality. It is surrounded by

atleast 8 public offices and other private shops and the prosecution has not examined any witnesses from that locality. He submitted that the dying declaration given by her was cryptic and she had not given full details about the incident with reference to dying declaration Exhibit-111, wherein she has not mentioned name of accused no.3. He therefore submitted that the evidence led by the prosecution is doubtful and therefore the Applicants deserve to be released on bail. They are in custody since 2019.

4. The learned APP opposed this submission. She relied on the evidence of P.W.1, P.W.13 and P.W.18. She submitted that there is consistent oral and dying declarations, wherein she has narrated the incident. P.W.13 had even videographed the recording of the dying declaration. Therefore, there is no scope to even argue that there was no dying declaration or that she had not named the accused.

5. We have considered the submissions. P.W.1 was the father of the deceased. He has deposed that the deceased was residing separately from her husband. She was residing with P.W.1, who was her father. The incident took place at about between 08:00

to 08:30 in the night. At that time, P.W. 1 was in his house. He was informed by one advocate about the incident. He went to the hospital to see his daughter. She was shifted to Sassoon Hospital, Pune. He met his daughter. At that time, she told him that she had gone to Daund Railway Station. At that time all the three accused came near her. Accused No.1 Pangari picked up quarrel with her. She was assaulted and was dragged to Shalimar chowk where accused No.3-Dushkalya caught hold of the deceased and accused No.2-Sunil poured kerosene on her person. Accused No.1 set her on fire and then they ran away from the spot. The people in the locality poured water on her and took her to the police station.

6. His evidence is supported by P.W.13-PI Sunil Mahadik. He had recorded the dying declaration of the deceased on his mobile phone. After that his associate Rushikesh Adhikari recorded her dying declaration. P.W.13 has deposed about the statement given by the deceased, which was similar to the dying declaration given by the deceased to her father. P.W.18 has also deposed in the same manner. He had recorded the dying declaration. In that dying declaration also the consistent story was mentioned. Hence, at this stage, there is sufficiently strong

material against both these Applicants. Therefore, we are not inclined to allow this Application. The Application is accordingly rejected.

[MANJUSHA DESHPANDE, J.] [SARANG V. KOTWAL, J.]