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

**INTERIM APPLICATION NO.1941 OF 2025
IN
CRIMINAL APPEAL NO.372 OF 2025**

1. Sou. Mamta Vijay Chavan ..
2. Sou. Rita @ Gauri Santosh Walmike .. Applicants

vs.

1. The State of Maharashtra .. Respondent

Mr. Prashant Mohite with Vaishali Ganpat Mane for the Applicants.

Ms. Priyanka S. Rane APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATE : 18th JULY, 2025

P. C. :

1. This is an Application for bail pending final disposal of the Appeal preferred by the Applicants. Both the Applicants were Original Accused Nos.1 and 2 in Sessions Case No.228 of 2014 passed by Additional Sessions Judge, Pune. The learned Judge *vide* the Judgment and order dated 15/02/2025 convicted both of them for the offence punishable under Sections 302, 323 read with 34 of the Indian Penal Code ("I.P.C.") and they were sentenced to suffer R.I. for life and pay a fine of Rs.35,000/- and in default to suffer S.I. for three months. The Appellants were in custody from

02/11/2013 upto 31/11/2014. For that period they were granted set off. They were again taken into custody from 15/02/2025 and till today they are in custody.

2. In this background, we have heard the learned Counsel for the Applicants and learned APP for the Respondent-State.

3. The prosecution story is that the deceased-Deepali was the daughter-in-law of Applicant No.1 and sister-in-law of Applicant No.2. The FIR was lodged at Faraskhana police station, Pune City *vide* C.R.No.211 of 2013 on 02/11/2013 under Section 307, 323, 504 read with 34 of IPC on the basis of dying declaration given by Deepali. Subsequently, she succumbed to her injuries and therefore the offence was converted to the one under Section 302 of IPC. During trial, the prosecution examined eight witnesses and defence examined two witnesses.

4. The main evidence against the Applicants is the dying declaration recorded by PW.1.

5. The learned Counsel for the Applicants submitted that there was a quarrel between Applicant No.1 and the deceased which led to the deceased committing suicide. Out of the frustration and anger, she had named both the Applicants and had given them specific roles. He submitted that there were other family members viz. the husband of the deceased in

the house and it was not possible that in his presence this incident would have taken place. The husband is not an accused. He submitted that the husband is examined as a prosecution witness and he has told the truthful story. In addition, there is evidence of two defence witnesses who are neighbors. Their independent version supports the defence case that it was a case of suicide.

6. The learned APP heavily relied on the dying declaration recorded by P.W.1. He submitted that the history of bad relationship is reflected in that dying declaration and therefore this is a seriously strong incriminating circumstance against the Applicants. She submitted that this circumstance is supported by other corroborative pieces of evidence in the form of spot panchnama and recovery of clothes of the deceased as well as those of Applicant No.1. This shows their presence at the spot. We have considered these submissions.

7. The dying declaration is recorded by P.W.1, A.P.I, Parshuram Shinde. He had received a phone call on 01/11/2013, at about 10.00 pm. He was informed that Deepali had suffered burn injuries. He went to Sassoon hospital. He enquired with the doctor, who opined that Deepali was in a position to give a statement and she was in position to speak. Thereafter P.W.1 went near Deepali and enquired with her. Deepali told him that in the

afternoon, there was quarrel between the Applicants on one hand and Deepali on the other, on the ground of cooking. In that quarrel, Applicant No.1 poured kerosene on her and the Applicant No.2-sister-in-law had set her on fire. The dying declaration was recorded. The doctor had opined that Deepali was in a position to speak. This is the main incriminating circumstance relied upon by the prosecution.

8. We find that there is a glaring infirmity in this evidence because the doctor had only opined that she was in a position to speak. He had not opined that she was in a mentally fit condition to narrate the incident. The P.W.1 himself had not satisfied himself that Deepali was in a position to understand his questions and give proper answers. This is the main circumstance which according to us, is not free from doubt. The prosecution case suffers substantially. Apart from that, the prosecution has examined P.W.6 - Amit Chavan, who was the husband of the deceased. He had narrated the incident that on 01/11/2013, at about 6.30 pm there was a quarrel between Applicant No.1 and Deepali. Therefore, this witness took his mother i.e. Applicant No.1 outside the house to pacify her. In the meantime, Deepali also came out and started quarreling with this witness. When he tried to pacify her, she went inside and again the quarrel continued. Again this witness took Applicant No.1 outside the house but after that Deepali poured

kerosene on herself and set herself on fire. PW.6 brought her young daughter outside the house and tried to extinguish the fire. In the process he also suffered injuries.

9. This witness is examined by the prosecution as their witness. He was not declared hostile. Therefore, the version given by him will have to be seriously taken into consideration. In addition, there are two defence witnesses Sunil Multani and Mangesh Multani. They were the neighbors. They had deposed that there was a quarrel between Applicant No.1 and Deepali. PW.6 had brought Applicant No.1 outside the house. After that Deepali poured kerosene on herself and set herself on fire. At that time, Applicant No.2 was not present. She came to the house after the incident. D.W.1 has added that Deepali always used to pick up quarrels and used to threaten that she would commit suicide and that she would implicate their family falsely.

10. Considering this defence evidence, which will have to be treated on par with the prosecution evidence, there appears to be some substance in the submissions of the learned counsel for the Applicant that it was not a case of murder but was a case of suicide and both the Applicants are implicated out of frustration.

11. Based on this discussion, in our opinion, the Applicants have made out a case for grant of bail during pendency of their Appeal. They were on bail during trial. They have not misused that liberty.

12) Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.372 of 2025, the Applicants are directed to be released on bail on their executing P.R. bond in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand each), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)