HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.205 OF 2018
(Anita Dnyanoba Holambe Vs. The State of Maharashtra)

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Mr. J.M.Murkute, Advocate for Applicant
Mr. A.R.Kale, APP for Respondent-State

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CORAM : MANGESH S. PATIL, J.
DATED : 19th March 2018

PER COURT :-

This is an application for bail under Section 439 of the Cr.P.C.

2. The applicant being a sister-in-law of the deceased has been implicated in Crime No.35 of 2017 registered with Kingaon Police Station, District Latur for the offences punishable under Sections 302, 498(A), 323, 504, 307 read with Section 34 of the Indian Penal Code on the basis of her dying declaration which is treated as FIR for registering the offence.

3. The learned advocate for the applicant submits that the allegations as against the applicant are

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HIGH COURT OF JUDICATURE AT BOMBAY

omnibus, no specific overt act is attributable to her going by the dying declaration which has been treated as FIR. All the blame has been passed on to the mother-in-law for having set her ablaze with a match stick. It is only in the second dying declaration recorded after three days of recording of the first dying declaration that a further clarification has been solicited. However, the subsequent dying declaration is apparently recorded with an ulterior intention to manipulate the things. It clearly reads about it having been recorded by a Police Officer and it was read over to the deceased in presence of her father and brother and it is only after she admitted it that it was recorded as such. The applicant is in jail since July 2017. She is having three children and being minors they are in jail along with her. The investigation is already over and even charge-sheet has been filed. She is in fact a sister-in-law of the deceased married in the year 2011 and staying at a different place with her husband and children. There is no question of her jumping the bail or tampering with the evidence. The trial is not likely to

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HIGH COURT OF JUDICATURE AT BOMBAY

get over soon and she may be released on bail.

4. The learned APP opposes the application. He submits that there is every specific reference in both the dying declarations attributing a role to the applicant. Her plea of alibi cannot be considered at this juncture. The deceased had specifically stated about all the accused persons including the applicant having poured kerosene on her person and having set her ablaze. There are couple of witnesses in the form of Balaji Dhakane and his wife Ujjwala and one Pralhad Dhakane to whom the deceased had allegedly orally disclosed as to how the incident had taken place. Thus, complicity of the applicant in commission of the crime is apparent. The offence is serious and punishable upto death and applicant may not be released on bail.

5. I have carefully gone through the charge-sheet.

6. The incident had taken place on 02.04.2017 at about 7.00 a.m. and her first dying declaration has been recorded between 9.00 to 9.30 a.m. which has been subsequently treated as FIR and the offence was

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HIGH COURT OF JUDICATURE AT BOMBAY

registered inter alia under Section 307 of the IPC. It appears that she subsequently died on 07.04.2017 and her another dying declaration was recorded on the previous date. Apart from these two written dying declarations, the witnesses Balaji, Pralhad and Ujjwala have also come out with oral dying declarations which are in consonance with the first dying declaration which is treated as FIR.

7. However, conspicuously, the allegations as against the applicant are omnibus. Though the deceased had named her specifically, only a vague and general statement has been made stating that all the accused had poured kerosene on her person and her mother-in-law having set her ablaze with a match stick. The fact remains that there are no allegations as against applicant about she having set her ablaze. Even in the oral dying declaration no specific overt act is attributed to the applicant about she having set the deceased ablaze. It is in view of such peculiar state of affairs, when the investigation is over, the applicant is a woman having 3 small children to maintain and to lookafter, in

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HIGH COURT OF JUDICATURE AT BOMBAY

my considered view this is a fit case wherein the applicant deserves to be released on bail.

8. Apart from the above state of affairs, the learned Additional Sessions Judge has granted bail to the mother-in-law inspite of the fact that in all the dying declarations oral as well as written a specific overt act is attributed to her about she having set the deceased ablaze with a match stick and still the State has not moved for cancellation of bail.

9. Thus on merits as well as on the ground of parity the applicant deserves to be released on bail. Hence, I pass the following order :

ORDER

(i) The application is allowed.

(ii) The applicant be released on bail on her executing a P.R. Bond of Rs.25,000/- and furnishing a solvent surety in the like amount subject to condition that she shall not tamper the evidence.

(iii) Bail before the trial court.

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HIGH COURT OF JUDICATURE AT BOMBAY
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(iv) It is made clear that the observations made herein above are confined to the decision of this application and the learned Trial Judge shall not feel influenced by them.

(MANGESH S. PATIL, J.)

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