



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.879 OF 2018

Adam s/o Gulam Sayyed,
Age : 40 years, Occu. Agriculture.,
R/o Jawala (Ni), Taluka Paranda,
District Osmanabad

APPLICANT
(Accused No.1)

VERSUS

The State of Maharashtra,
through Paranda Police Station,
Taluka Paranda, Dist. Osmanabad

RESPONDENT

Mrs. Rashmi S. Kulkarni, Advocate for the applicant
Mr. S.B. Joshi, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 9th AUGUST, 2018

ORDER :

The applicant has prayed for bail in connection with Crime No.53 of 2018, registered in Police Station, Paranda, District Osmanabad for the offences punishable under Sections 302 and 498-A read with Section 34 of the Indian Penal Code ("IPC", for short).

2. It is alleged that the applicant, who is the husband of the deceased Reshma, with the assistance of

his parents and two brothers, set the deceased Reshma on fire by pouring kerosene on her person on 21st March, 2018 at about 7.00 p.m. to 8.00 p.m., when she was residing at his house, since she refused to sign a blank stamp paper and also did not bring money from her maternal home. On the report of the brother of the deceased Reshma, the above numbered crime came to be registered.

3. The learned counsel for the applicant submits that the marriage of the applicant with the deceased Reshma was performed prior to about twelve years. She has begotten two children, who are aged 11 years and 9 years from this wedlock. There is absolutely nothing to show that the deceased Reshma was ever illtreated or harassed on any count during last twelve years prior to the date of the incident. The neighbours of the applicant also do not state anything to indicate that there were any quarrels between the deceased Reshma and the applicant or his other family members. The learned counsel then pointed out to the first dying declaration of the deceased Reshma recorded by the Police Officer on 22nd March, 2018 at about 1.00 a.m. in the hospital, wherein she stated that she committed suicide by setting

herself ablaze after pouring kerosene on her person. The learned counsel then submits that after the brother and other relations of the deceased Reshma attended the hospital, she changed her version and in her second dying declaration, she alleged that the applicant, his two brothers and parents collectively set her on fire after pouring kerosene on her person. According to the learned counsel, the inconsistent dying declarations of the deceased Reshma would not inspire confidence about the facts narrated by her. There was no reason for the applicant to illtreat her or insist her to sign on a blank stamp paper. In view of her earlier dying declaration about committing suicide, the case of the prosecution for the offence punishable under Section 302 of the IPC, prima facie, cannot be accepted as it is. The learned counsel submits that there is unexplained delay in lodging the F.I.R., which creates strong doubt about the case of the prosecution. The applicant has no criminal antecedents. He has to look after his two children. He is in jail since 30th March, 2018. He is ready to abide by the conditions that may be imposed by this Court in case he is released on bail. She, therefore, prays that the applicant may be released on bail.

4. The learned A.P.P. strongly opposed the application. He submits that the dying declaration of the deceased Reshma itself is sufficient to connect the applicant with the alleged offences. She has specifically stated that the applicant, his brothers and parents collectively set her on fire by pouring kerosene on her person. There was no reason for her to speak false against the applicant. The mother and other relations of the deceased Reshma state that she was being harassed by the applicant with a view to compel her to bring money from her maternal home. According to him, there is strong prima facie case made out against the applicant. He, therefore, prays that the application may be rejected.

5. The applicant is tried to be connected with the offences punishable under Sections 302 and 498-A of the IPC. If the first dying declaration of the deceased Reshma recorded on 22nd March, 2018 at about 1.00 a.m. is considered, the offence punishable under Section 302 of the IPC, prima facie, would not be disclosed. The said statement has been recorded after the Medical Officer examined her and opined, prior to and after recording of

the dying declaration, that she was conscious, oriented and able to give statement. It seems that in her second dying declaration recorded on the same day at 12.45 p.m., after her brother and other maternal relations came in the hospital, she changed her version and alleged that the applicant, his brothers and parents set her on fire by pouring kerosene on her person. Thus, the reason given by the applicant behind her sustaining burns in these two dying declarations is totally contradictory. Further, there is delay of about six days in lodging the FIR, which has not been explained. When the brother of the deceased Reshma came to know from her on 22nd March, 2018 itself that she was set on fire by the applicant and other accused persons, there was no reason for him to keep silence for six days and then think of lodging the F.I.R. In the circumstances, I do not find any impediment in the way of the applicant to get the relief of bail.

6. The observations made in this order, being prima facie in nature, would have limited effect for deciding the present application only and would not influence any other proceeding arising out of the present crime.

7. In the result, I pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) The applicant shall be released on his executing bail bonds in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount, on the following conditions:-
- (a) The applicant shall not tamper with the prosecution evidence in any manner.
- (b) The applicant shall not indulge in any criminal activity..
- (iii) The bail bonds shall be furnished before the Trial Court.
- (iv) The application is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

npj/ba879-2018