

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 330 OF 2015.

1. Digambar Malhari Tiknare,
Age: 55 years, Occ: Agri.,
2. Piraji Malhari Tiknare,
Age: 45 years, Occ: Agri.,
3. Pandurang Mahadu Tiknare,
Age: 65 years, Occ: Agri.,

All R/o. Kundrala, Tal. Mukhed,
District : Nanded.

...Applicants

versus

The State of Maharashtra,
Through the Principal Secretary,
Home Department, Mantralaya,
Mumbai
And
Police Station Officer,
Mukramabad Police Station,
Mukramabad, Tal. Mukhed,
Dist. Nanded.

...Respondent

.....
Mr. R.R. Mantri, Advocate h/f Mr. R.R.Sacheti, Advocate for
applicants.
Mr. A.V. Deshmukh, A.P.P. for the respondent.
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CORAM : T. V. NALAWADE, J.

DATE : 2nd FEBRUARY, 2015.

ORAL ORDER :

This is an application for grant of bail.

2. Both the sides are heard.
3. Perused the papers of investigation.
4. The crime was registered on the basis of complaint of Hanumant Anna Devkate. Deceased Maruti was his real brother. These brothers have some dispute over agricultural land with the applicants and one Vishwambhar. It is the case of the applicants that the complainant has made encroachment over some portion of their agricultural land and as the complainant is not ready to hand over the encroached portion, there used to be quarrels.
5. The allegations are made that on 06/08/2014 after 8-30 a.m, applicants Digambar and Vishwambhar obstructed Maruti when he was passing by village Pandan, road. The allegations are made that during quarrel, Vishwambhar gave blow of *Sura* (blade of spear) on the abdomen of deceased. The allegations are made that at the time of the incident, Piraji had held the head of deceased, Digambar had held hands of the deceased and Pandurang had held legs of the deceased. The allegations are made that lady members had given

instigation to the male members to finish Maruti. It is contended that on seeing neighbouring land holders like Anna and Pandit running towards them, applicants and Vishwambhar ran away.

6. Charge-sheet is already filed. Papers of investigation shows that the clothes of applicants Digambar and Pandurang are shown to be produced by main accused Vishwambhar. C.A. Report is not received. The record shows that clothes of Piraji were taken over from him and statement of Piraji under Section 27 of the Evidence Act in respect of weapon is recorded. Weapon is recovered at the instance of Piraji.

7. Learned A.P.P. submitted that there will not be only the evidence of complainant, but there will be evidence of other eye witnesses and material is sufficient to make out *prima facie* case for offence punishable under Section 302 read with section 149 of the Indian Penal Code. He submitted that considering the nature of dispute, it is not desirable to grant bail to any of the applicant-accused.

8. The learned Counsel for the applicants argued of some inconsistencies, which according to him, are there in the statements of eye witnesses recorded under Section 161 of the Code of Criminal

Procedure. He submitted that even the statement under Section 27 of the Evidence Act given by Piraji will be of no help to the prosecution, in view of the manner, the weapon is shown to be discovered. The submissions of learned Counsel made for grant of bail to Piraji cannot be accepted at this stage.

9. To make a strong *prima facie* case, there has to be circumstantial check. Post mortem report shows that only one injury was caused by dangerous weapon and other 2 to 3 injuries were of the nature of abrasion. Death took place due to injury caused by dangerous weapon. Applicants Digambar and Pandurang are behind the bar since the date of incident. In view of the nature of material collected against them, this Court held that it is not desirable to keep them behind the bar. In the result, following order.

: O R D E R :

(a) The application of applicant No.2 - Piraji Malhari Tiknare is rejected.

(b) The application of applicant Nos. 1 and 3 - Digambar Malhari Tiknare and Pandurang Mahadu Tiknare is allowed.

(c) They are to be released on furnishing solvent surety of Rs.30,000/- (Rs.Thirty Thousand only) with one surety of like amount.

(d) Applicant Nos. 1 and 3 shall not tamper, in any manner whatsoever, with the prosecution evidence. The applicants shall not commit similar or any other offence, while on bail. They will not enter the village where the incident took place, till disposal of the case filed against them.

These observations are made only for the purpose of deciding this criminal application.

[T. V. NALAWADE, J.]