

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

Criminal Application No. 1658 Of 2015.

UMESH S/O GANESHRAO CHAVAN & ORS.

VERSUS

THE STATE Of MAHARASHTRA.

Appearance =>

Mr. R.N. Dhorde, Senior Counsel i/by Mr. Vikram R. Dhorde,
Advocate for the Applicants.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of
Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 20th April, 2015.

Per Court :-

Leave to correct the name of father of Applicant No.2 as
“Dhondiba” instead of “Dhondoba”.

[2] Present Criminal Application is filed by the applicants for grant of regular bail, in connection with CR No.67/2014 registered with Police Station, Badnapur Taluka – Badnapur, District – Jalna for the offences punishable under Section.s. 143, 147, 148, 149, 120(B), 307, 302 of the Indian Penal Code and under Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4 read with 25 of the Arms Act and under Section 135 of the Bombay Police Act.

[3] Heard Mr. R.N. Dhorde, learned Senior Counsel i/by Mr. Vikram R. Dhorde, Advocate for the Applicants and Mr. A.S. Shinde, learned Additional Public Prosecutor for the State.

[4] The Investigating Officer has already completed the entire investigation and charge sheet is already filed. The First Information Report is lodged on 5th April, 2014 at 14/20 hrs. Date of occurrence is 3rd April, 2014 at 19/30 hrs. According to the First Information Report, role ascribed to the present applicants is that they gave blows of iron rod on the legs of deceased – Manoj.

Though First Informant – Sandeep Bhagwan Kasab was accompanied deceased, he has not ascribed any role against the present applicants that he was assaulted by the present applicants.

[5] According to the learned Senior Counsel, there is delay of two days in lodging the First Information Report and said delay is not at all explained by the prosecution.

He invited the attention of this court to page Nos. 58 and 59 of the compilation, which is part and parcel of the Charge-Sheet. It is the intimation given by Oum Multi Specialty Hospital and Research Center Pvt.Ltd., Jalna to the Police Station, Jalna by which it was intimated that deceased – Manoj and Sandeep (first informant) are admitted in the hospital. In spite of that, it appears from the charge sheet that, no steps were taken to record their statements, immediately. Further during the course of investigation, the statement of eye witness – Balasaheb Ramkisan Ukirde is recorded. His statement shows that, he immediately rushed to the Police Station and according to him, Police immediately arrived at the spot.

Inspite of this, on the day of occurrence, the First Information Report was not lodged. Further in the statement of Balasaheb dated 5th April, 2014 he himself stated that he rushed to the Police Station and upon his request, police arrived at the spot clearly shows that police ought to have recorded the statement of Balasaheb on 3rd April, 2014 itself.

[6] Mr. Shinde, learned Additional Public Prosecutor submits that there is recovery at the instance of present applicants on their memorandum statements.

[7] I have gone through the said memorandum statement and recovery panchnama. From which it is clear that place from where the weapons allegedly discovered, at the instance of the applicants, is a open space and present applicants are not having exclusive control or possession over the said spot. Further the recovery panchnama at the instance of Umesh is recorded at 14.00 to 14.30 hrs. thus at 14.00 hrs. itself the Investigating Officer was knowing the place/spot from where weapons were seized. However, the recovery panchnama in respect of discovery statement made by Baburao, was recorded at 14/30 hrs to 15.00 hrs. and alleged recovery is made from the same place. Once the Investigating Officer was in know of the place, the subsequent discovery and recovery at the instance of Baburao, at least, prima facie is to be discarded while considering the application for bail.

[8] Mr. R.N. Dhorde, learned Senior Counsel submits that, the applicants will not enter the limits of Badnapur Taluka – District – Jalna till decision of trial and they shall reside at Aurangabad.

[9] The Investigating Officer has already completed the entire investigation and charge sheet is already filed, therefore, further continuance of the applicants in jail is not warranted. Hence, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Applicant No.1 - UMESH S/O GANESHRAO CHAVAN and Applicant No.2 – BABURAO S/O DHONDIBA CHAVAN shall be released on regular bail on they executing P.R. Bond of Rs. 35,000/- [Rs. Thirty Five Thousand.] each with two solvent sureties in the like amount, in connection with CR No.67/2014 registered with Police Station, Badnapur, District – Jalna for the offences punishable under Section.s. 143, 147, 148, 149, 120(B), 307, 302 of the Indian Penal Code and under Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4 read with 25 of the Arms Act and under Section 135 of the Bombay Police Act.

(iii) Bail before trial court.

(iv) The Applicants are directed that they shall not enter the territorial limits of Badnapur Taluka – District – Jalna till decision of trial and they shall reside at Aurangabad.

(v) The Applicants are further directed that they shall immediately inform their address of residence at Aurangabad to the Investigating Officer.

(vi) The applicants shall attend the Police Station, Mukundwadi, Aurangabad once in a week, preferably on every Sunday and shall remain in the Police Station, between 3.00 p.m. to 4.00 p.m., till trial is over.

(vii) Observations made in the present Application for grant of bail, shall not come in the way of trial court, at the time of trial; since observations are only for the purpose of decision of bail application.

(viii) With this Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)