

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

CRIMINAL APPLICATION NO. 1684 OF 2015

Tukaram s/o Bapurao Tambe **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

.....

Mr. N.K.Kakade h/f Mr. A.N.Kakade,
Advocate for Applicant.

Mrs. V.A. Shinde, A.P.P. for Respondent - State.

.....

WITH

CRIMINAL APPLICATION NO. 1459 OF 2015

Somnath s/o Balu Tambe **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

.....

Mr. R.A.Jaiswal, Advocate for Applicant.

Mrs. V.A. Shinde, A.P.P. for Respondent - State.

.....

CORAM : V.M.DESHPANDE, J.

DATE : 7th APRIL, 2015

.....

PER COURT :

1. Both these Criminal Applications can be conveniently disposed of by this common order since both arise out of Crime No. 106/2014 registered with M.I.D.C. Police station, Paithan, district Aurangabad for the offence punishable u/s 302 read with 34 of the Indian Penal Code.

2. Heard Mr. N.K.Kakade and Mr. R.A.Jaiswal, learned Counsel for the applicants and Mrs. V.A.Shinde, learned A.P.P. for the respondent – State in extenso.

3. The deceased is one Aba Tambe. The Investigating Officer has already completed his entire investigation and charge sheet is already filed. The applicants are in jail since 09/11/2014.

4. The dead body of Aba was found in the well situated in the agricultural field of Tukaram Tambe, who is applicant in Criminal Application No. 1684 of 2015. The brother of deceased viz. Nana on 07/11/2014 gave intimation to police station M.I.D.C., Paithan that the body of his brother Aba is found in the agricultural field of Tukaram Tambe. On the basis of the said intimation, accidental death u/s 174 of the Code of Criminal Procedure was recorded vide A.D. No. 30/2014.

5. On 08/11/2014, widow of Aba viz. Satyabhamabai lodged report with M.I.D.C. Police station, Paithan. In the said F.I.R., name of applicant Tukaram is not mentioned. However, the name of Sominath, who is applicant in Criminal Application No. 1459 of 2015 is mentioned. According to the statement made in the F.I.R., applicant Sominath and Shiru came to her house at 8.30 p.m. and asked her husband that they want to enjoy ' matan party ' and for that he should take some utensils and bread with him. The first informant objected her husband that he should not leave the place since she has already prepared meal. However, ignoring such resistance from wife, Aba proceeded with applicant Sominath and Shiru.

6. Perusal of the charge sheet reveals that there is no direct evidence against any of the applicant. The only circumstance is used against applicant Tukaram is the statement of Laxman, which was recorded on 12/11/2014 i.e. after the arrest of Tukaram. Even perusal of the said statement shows that there is no incriminating evidence and material against the applicants.

7. Learned A.P.P. submitted that the report of the Doctor clearly shows that the injuries appears on the person of deceased are antemortem and, therefore, she submitted that since the applicants were present, they can be held responsible for death of Aba.

8. In the charge sheet, it is appearing that at the

time of said party, some dispute arose between the deceased and accused persons and in that the deceased was done to death. Thus, *prima facie*, it appears that the incident has occurred in the spur of moment and under the influence of liquor. Therefore, whether it will be an offence punishable u/s 302 of the Indian Penal Code or other offence, is a debatable question. However, looking to the fact that the investigation is over and charge sheet is filed and there is no direct evidence against the applicants, their continuance in the jail custody is not warranted.

9. Hence, I pass the following order :

(i) The present Criminal Applications are hereby allowed.

(ii) Applicant Tukaram s/o Bapurao Tambe in Criminal Application No. 1684 of 2015 and applicant Somnath s/o Balu Tambe in Criminal Application No. 1459 of 2015 be released on bail in connection with Crime No. 106/2014 registered with M.I.D.C. Police station, Paithan, district Aurangabad for the offence punishable u/s 302 read with 34 of the Indian Penal Code on they executing P.R.Bond of Rs. 10,000/- [Rupees Ten Thousand] with two solvent sureties of like amount by each of them. Bail before the Sessions Court at Aurangabad in Sessions Case No. 38/2015.

(iii) Both the applicants shall attend police station M.I.D.C. Paithan, Dist. Aurangabad once a fortnight preferably on every Sunday between 3.00 p.m. and 4.00 p.m. till Charge is framed by the learned Sessions Judge.

(iv) Needless to mention, the observations made in the present matter are only for the purpose of decision of the present Criminal Applications and those are *prima facie* in nature. The learned trial Court shall not get influenced by the present Order while disposing of the trial.

(v) With these observations, the present Criminal Applications are disposed of.

[V.M.DESHPANDE, J.]