

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

Criminal Application No. 1791 of 2015

Sahebrao s/o Kanhu Rathod
And Others.

.. Applicants.

Versus

The State of Maharashtra.

.. Respondent.

Shri. Sudarshan J. Salunke, Advocate, for applicants.
Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
respondent.
Shri. Suhas B. Ghute, Advocate, to assist the APP.

CORAM: T.V. NALAWADE, J.

DATE : 20th APRIL 2015

ORDER:

1) This application is filed for bail. Both the sides are heard. This Court has perused the papers of investigation. Previous application bearing Criminal Application No.128 of 2015 was disposed of as withdrawn when this Court had expressed, after hearing the application on merits, that the Court was not inclined to grant bail and then this application was withdrawn. Thus the previous disposal needs to be treated as dismissal on merits. In view of these circumstances it was necessary

for the present applicants to show that there has been change in circumstances.

2) Learned counsel for the applicants submitted that the applicants have been behind the bars for many months and it is not certain as to how much time will be required for conclusion of the trial. However, nothing is produced by the applicants to show that any attempt was made by the applicants before the trial Court for getting early disposal of the case. Thus these practices are being played to protract the hearing of the case and then move application for bail. In view of these circumstances, only due to the fact that the applicants have been behind the bars for 5 to 6 months it cannot be said that bail can be granted to the present applicants. On the last occasion merit was not discussed and so this Court is taking care to see that the merits are discussed in the present matter.

3) Deceased Vithal was the father-in-law of complainant Lata. Applicant No.1 is also her relative as he is brother of the deceased. Applicant Nos.2 and 3 are sons-in-law of applicant No.1.

4) The material collected shows that on 3-10-2014 quarrel took place between the family of the complainant and the family of the applicants as she goat of the applicants entered the field of the deceased and had caused damage to their crops. On 4-10-2014 when the complainant and her husband were returning home in the evening time from their field, present applicants intercepted them and they were making inquiry about the deceased. Deceased was following them. When the deceased was coming on motor cycle he was intercepted by the applicants and assault was made on the deceased by the present applicants. Allegations are made that assault was made by using fist blows, kicks and stones. The complainant and husband tried to intervene in the incident but they were also assaulted. The deceased died on the spot. The applicants and other accused left the spot only after the death of the deceased.

5) The post mortem report shows that as many as four surface wounds and injuries were found on the body. They had caused injuries to liver and spleen and there was haemorrhagic shock. The death took place due to

these injuries and fracture to the ribs. Thus, severe beating was given to the deceased and death took place on the spot. There are injury certificates in respect of the complainant and her husband showing that, they were present on the spot. There is injury certificate in respect of applicant No. 1 showing that he was involved in the incident. The spot panchanama shows that a part of sleeve of the banyan of the accused No.1 was found on the spot. The banyan of the accused No.1 was torn during the incident of assault and the sleeve was found lying on the spot. This circumstance is against the applicant No.1.

6) Learned counsel for the applicants submitted that there may be materials against applicant No.1 but there is no such material as against applicant Nos.2 and 3. Though there is no such record but they were present on the spot and their names are specifically mentioned in the FIR. The FIR was given immediately after the incident, on the same day. Copy of charge sheet shows that the charge sheet is filed against the applicants under sections 302, 147, 149 of the Indian penal Code. Considering the incident which took place in the presence of many

witnesses and in view of the fact the both the sides are related to each other there is possibility of tampering with prosecution witnesses in case the applicants are released on bail.

7) The learned counsel for the applicant has placed reliance on a case reported as **2015 STPL (Web) 86 SC (Dr. Vind Bhandari v. State of M.P.)**. He drew attention of this Court to the paragraphs 12 and 13 of the report. In view of the facts of the present case the reported case (cited supra) is not of any help.

8) This Court holds that in view of the aforesaid circumstances of the present case the applicants are not entitled for the relief of bail. In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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