

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

CRIMINAL APPLICATION NO. 1948 OF 2015

Pandurang s/o Auji Thokal & Anr. **APPLICANTS**

V E R S U S

The State of Maharashtra **RESPONDENT**

.....

Mr. N.V.Gaware, Advocate for Applicants.

Mrs. Pratibha Bharad, A.P.P. for Respondent - State.

.....

CORAM : V.M.DESHPANDE, J.

DATE : 9th JUNE, 2015

.....

PER COURT :

1. By the present application, the applicants are seeking their enlargement on bail in connection with Crime No. 313/2014 registered with Police Station Parner, Dist. Ahmednagar for the offences punishable u/s 302,323,201,504 read with 34 of the Indian Penal Code.

2. Heard Mr. N.V.Gaware, learned counsel for the applicants and Mrs. Pratibha Bharad, learned A.P.P. for Respondent - State.

3. In the present case, the investigating agency has already completed its entire investigation and challan is

presented before the Court of law.

4. Present applicants are arrested on 25/12/2014 and since then they are in Jail. Deceased is one Zulelsing Chavan. In respect of his death, A.D.No. 14/2014 was registered at police station Tokawade, Taluka Murbad, Dist. Thane. The said A.D. was registered on the basis of the information given to the police authority by one Jagan Barku Kondabale. The Inquest was performed on the dead body during the enquiry of the said A.D. The Inquest shows that there were no external injuries on the dead body. The spot of incident was Malshej Ghat. It is to be noted that I have already considered the bail application of the co-accused in Criminal Application No. 1350 of 2015. While granting bail, I have considered in detail the Inquest panchanama.

5. Postmortem report shows that there were only bruises and abrasions and cause of death was due to 'cardio respiratory arrest'. After the lapse of four and half months, one Raju Sukchand Wali, who worked as Cook at hotel Samadhan owned by present applicant No. 1 Pandurang Thokal, lodged report with police station Parner. In the F.I.R., he alleges that deceased Zulelsing Chavan was also working with him in the said hotel and on 28/10/2014, the deceased under the influence of liquor started abusing present applicant No. 1 Pandurang Thokal resulting into beating by applicant No. 1. In the F.I.R., it is stated that the other co-accused gave fists and kick blows. According to the charge sheet, deceased was taken in TATA Sumo car of one Sachin

Bhangade and the dead body of deceased was thrown in Malshej Ghat.

Learned A.P.P. invited my attention to the statement of Sachin Bhangade. *Prima facie*, evidence of Sachin Bhangade is inadmissible in as much as the perusal of the statement would reveal that his statement is based on hear-say evidence. Further, from 28/08/2014 till 26/12/2014 when his statement was recorded, there is no explanation appearing in his statement as to why for four and half months he has kept mum.

6. F.I.R. is lodged after four and half months. There is no explanation in the F.I.R. as to why the first informant has kept mum. Further, the investigation is already over. The applicants are in custody since 25/12/2014. The trial has not yet commenced. Looking to this, I see no reason for the continuance of custodial presence of the applicants. That leads me to pass the following order.

(i) Present Criminal Application is allowed.

(ii) Applicant No. 1 Pandurang s/o Auji Thokal and applicant No. 2 Shivaji s/o Paraji Bhangade be released on bail in connection with Crime No. 313/2014 registered with Police Station Parner, Dist. Ahmednagar for the offences punishable u/s 302,323,201,504 read with 34 of the Indian Penal Code registered with police station Parner, Dist. Ahmadnagar on they

executing P.R. Bond of Rs. 15,000/- [Rupees Fifteen Thousand] with two solvent sureties of like amount by each of them.

(ii) Present applicants shall attend Police Station Parner once in a week, preferably on every Sunday in between 4.00 – 5.00 p.m. till the Charge is framed.

[V.M.DESHPANDE, J.]