

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

CRIMINAL APPLICATION NO. 2207 OF 2015

Nitin @ Nitesh Bhaskar Shelke **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

**WITH
CRIMINAL APPLICATION NO. 2208 OF 2015**

Yogesh s/o Madhav Thorat **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

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Mr. V.B.Mantri h/f Mr. H.A.Joshi,

Advocate for Applicants.

Mr. V.H.Dighe, A.P.P. for Resp.– State.

Mr. A.K.Gawali, Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 10th JUNE, 2015

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PER COURT :

1. These are two applications for regular bail since the applicants are arrested in Crime No. 13/2015 registered with Parner police station, Dist. Ahmadnagar for the offences punishable u/s 302,201 read with 34 of the Indian Penal Code.

2. Heard Mr. V.B.Mantri holding for Mr. H.A.Joshi, learned counsel for the applicants, Mr. V.H.Dighe, learned A.P.P. for respondent – State and Mr. A.K.Gawali, learned counsel for first informant in extenso.

3. Investigating Officer has already filed Charge sheet before the court of law after the completion of his entire investigation. Date of incident is 14/08/2014. However, F.I.R. is lodged on 16/01/2015. In so far as delay is concerned, learned counsel for the first informant has pointed out that for the registration of the offence, he was required to file Writ Petition before the Hon'ble Division Bench of this Court bearing W.P. No. 1286 of 2014, which was allowed and thereafter Crime is registered.

4. In that view of the matter, while considering the present bail application the fact of delay is not weighed in the mind of the Court.

5. Dead body of Amol was found in the well situated in the agricultural field of applicant Yogesh in Criminal Application No. 2207 of 2015. After fishing out the dead

body, proceedings u/s 174 of the Code of Criminal Procedure were registered. Charge sheet shows the communication from the Police Inspector to the Village Development Officer which is dated 21/08/2014, by which the P.S.O. has asked the said authority to beat drum in order to get the information from the persons knowing about deceased Amol. In the back-drop of this, statement of Sumanbai, who claims that on the date of incident, she has seen present applicants taking away deceased Amol with them has to be appreciated. Said statement is recorded on 18/01/2015. There is no explanation as to why she has not reported the matter or she has not responded to the beat of drum made by the authority in the village.

6. There is no eye witness account. The entire case of the prosecution is based on the circumstantial evidence. The strongest circumstance which is put into service by the learned A.P.P. and learned counsel for the first informant is 'last seen'. By the said circumstance, it can not be said that present applicants are responsible for the homicidal death of the deceased. It will be the circumstance to complete the chain. But, the said circumstance is not sufficient to hold the presence of the present applicants in jail, who are behind bars since 21/01/2015. In view of the aforesaid situation and in view of the fact that charge sheet is filed, present applications needs to be allowed.

7. The observations in this order are prima facie in nature and the learned Judge, who shall be conducting the

trial, shall not get influenced by the said observations. The applicants shall not indulge themselves to tamper the prosecution case.

8. Hence, I pass the following order.

(i) Present Criminal Applications are hereby allowed.

(ii) Applicant Nitin @ Nitesh Bhaskar Shelke in Criminal Application No. 2207 of 2015 and applicant Yogesh s/o Madhav Thorat in Criminal Application No. 2208 of 2015 be released on bail on they executing P.R. Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] with one solvent surety of like amount by each of them in connection with Crime No. 13/2015 registered with Parner police station, Dist. Ahmadnagar for the offences punishable u/s 302,201 read with 34 of the Indian Penal Code. Bail before the trial Court.

(iii) Present Criminal Applications are disposed of.

[V.M.DESHPANDE, J.]