

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 2840 OF 2015
IN APEAL/447/2015 WITH APPLN/3280/2015 IN
APEAL/476/2015 WITH APEAL/447/2015 WITH
APEAL/476/2015**

SHAIKH HAJI SHAIKH BABU
VERSUS
THE STATE OF MAHARASHTRA

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Advocates for Applicants : Mr. Chatterji Joydeep & Mr. A.R.
Gaikwad
APPs for Respondent/State : Mr. B.L. Dhas & Mr. K.S. Patil
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CORAM : S.S. SHINDE & A.M. BADAR, JJ.
Dated: August 26, 2015
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PER COURT :-

Heard the learned counsel appearing for the applicants. It is submitted that, the evidence of PW-4 – Pooja Jamdade is not reliable. Her statement was recorded by the Police belatedly. If the cross-examination of PW-4 is perused carefully, it appears that, she stated about the commission of offence before recording her statement. It is submitted that, the evidence of PW-4 suffers from

omissions, contradictions and exonerations. There is no corroboration to the evidence of PW-4. Even the medical evidence does not support the case of the prosecution, in as much as, the Doctor has not opined that, whether the injuries caused are responsible for causing death and the death caused is due to the said injuries. In addition to the above, the learned counsel appearing for accused – Indubai submits that, Indubai was on bail during the trial. It is submitted that, there are three children, who are dependent upon her. Therefore, the learned counsel appearing for the applicants submits that, the applications for bail may be allowed.

2. On the other hand, the learned Additional Public Prosecutor appearing for the Respondent/State, relying upon the findings recorded by the trial Court and the notes of evidence, submits that, the trial Court has properly considered the evidence of PW-4, which gets corroboration from the evidence of PW-5, coupled with medical evidence and all other evidence. Therefore, he submits that, the applications may be rejected.

3. We have heard the learned counsel appearing for the applicants and the learned Additional Public Prosecutor appearing for the Respondent/State. With their able assistance, we have perused the evidence of PW-4 and PW-5 and other notes of evidence. Prima facie, it appears that, the findings recorded by the trial Court appear to be in consonance with the evidence on record. The statement of PW-4 was recorded under Section 164 of the Code of Criminal Procedure. There is corroboration to the evidence of PW-4 from the evidence of PW-5. In that view of the matter and since the appeals are pending for hearing, we do not wish to elaborate the evidence. Suffice it to say that, prima facie it appears that, the findings recorded by the trial Court are sustainable. No case is made out. Both applications for bail are rejected.

4. Registry of this Court is directed to send back the Original Record and Proceedings to the Court of Additional Sessions Judge, Beed. After receipt of the original record and proceedings, the Registry of concerned Court shall prepare the paper book and send it back along with original Record and Proceedings to the Registry of this

Court, as expeditiously as possible, however, in any case, within three months from today.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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