

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

CRIMINAL WRIT PETITION NO.991 OF 2015

1. Pappu @ Balaprasad Babulal
Agrawal, Age 42 years,
Occu. Agriculture, R/o Asegaon,
Taluka Basmath, District Hingoli
2. Dilip s/o Babulal Agrawal,
Age 31 years, Occu. Agriculture,
R/o Asegaon, Taluka Basmath,
District Hingoli
3. Roshan s/o Babulal Agrawal,
Age 27 years, Occu. Agriculture,
R/o Kabra Nagar, Nanded
4. Swarnamala Sainath Agrawal,
Age 26 years, Occu. Agriculture,
R/o Asegaon, Taluka Basmath,
District Hingoli
5. Varsha Dilip Agrawal,
Age 28 years, Occu. Agriculture,
R/o Asegaon, Taluka Basmath,
District Hingoli
6. Savita Balaprasad Agrawal,
Age 32 years, Occu. Agriculture,
R/o Kabra Nagar, Nanded
7. Babulal Vaijinath Agrawal,
Age 67 years, Occu. Agriculture,
R/o Kabra Nagar, Nanded

..Petitioners

- Versus -

- . The State of Maharashtra,
Through Police Station in-charge,
Basmath Police Station,
District Hingoli

..Respondent

Mr S.S. Gangakhedkar, Advocate for petitioners
Mrs B.B. Gunjal, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st August 2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. With the consent of parties, heard finally at the stage of admission.

2. By way of present petition, the petitioners are seeking discharge in Sessions Case No.14 of 2013, for the offences punishable under Sections 306, 323, 504, 506 read with Sec.34 of Indian Penal Code.

3. The facts as are necessary for deciding the present petition are as under:

4. Complainant Radha Balaji Mule, on 7th July 2011 claimed that the present petitioners have abetted the suicide by her husband on the following grounds :

(a) Her husband Balaji borrowed Rs.18,000/- from Basic Finance Company, Nanded;

(b) An amount of Rs.13,000/- was paid to Sainath Babulal Agrawal;

(c) Sainath Agrawal has refused to repay Rs.13,000/- or the installments, as were payable to Basic Finance Company.

(d) On 30th June 2011, the petitioners herein have assaulted deceased Balaji and issued death threats to him;

(e) The incident was witnessed by one Hiranman Kamaji Mule;

(f) On 1st July 2011, at 6.00 a.m. Balaji committed suicide

5. Pursuant to the complaint filed by wife of deceased Balaji, Crime No.155 of 2011 came to be registered against the present petitioners. After investigation, all the petitioners were charge-sheeted with one Gajanan More and Sainath Agrawal, who are not before this Court.

6. The petitioners thereafter approached the learned Sessions Court seeking discharge vide applications Exh.18 and 19. The said applications came to be rejected by common order dated 3rd July 2015 by learned Additional Sessions Judge, Basmath, as such present petition.

7. Learned Counsel for the petitioners Mr Gangakhedkar would urge that as the charge is not framed, the trial before the learned Sessions Court has not commenced and as such, the petitioners

were entitled for moving the applications for discharge. According to him, the entire investigation speaks of a specific role against one Sainath, who is not before this Court and the present petitioners, based on omnibus allegations are impleaded as accused in the crime. According to him, there are general statements that all the petitioners have assaulted the deceased and issued him the death threats. He would then urge that the two dying declarations, given before the Police authorities and Special Judicial Magistrate do not name the present petitioners and the entire allegations were against Sainath Agrawal, i.e. accused No.1, who is not before this Court. He would further urge that in a delayed F.I.R., the case as was narrated by deceased Balaji was improved by the complainant by naming all the accused persons out of village politics. According to him, no external injuries could be noticed on the body of deceased Balaji, though it is claimed in the F.I.R. that the petitioners have assaulted Balaji. The alleged eye witness to the incident though has named present petitioners as accused, however, the role attributed to them in the statement of Hiranman, in the complaint of complainant and in the dying declarations is required to be considered by this Court. Apart from above, he would urge that the claim that Hiranman is an eye witness to the incident is far away from the truth, as could be inferred from the statement of Hiranman, which even if taken to be true at its face

value. In addition, he would rely upon the judgment of Apex Court in the matter of **Gangula Mohan Reddy Vs. Stte of U.P.** reported in **(S.C.)**, **Kishan Singh (D) through L.Rs. Vs. Gurpal Singh & Ors.**, reported in **(2010) 8, SCC 775**, **Riteshkumar Madanmohanprasad Singh Vs. State of Maharashtra**, reported in **2014 ALL MR (Cri) 1202**.

8. Learned A.P.P., while opposing the petition would urge that the investigation papers depict the prima facie involvement of the petitioners in the crime in question. According to her, the evidence as is collected during the investigation is required to be considered at this stage as it is and in view of statement of Hiranman, an eye witness, the petitioners cannot claim to be innocent. According to her, the offence was committed by the present petitioners, who abetted the crime in question. Learned A.P.P. then would urge that it is premature for the petitioners to claim that they are entitled for discharge. She would then support the order passed by the learned Sessions Court, which is based on the evidence of Hiranman Mule, an eye witness.

9. With the assistance, I have perused the charge-sheet filed in the petition and considered the rival submissions made by respective parties. The offence punishable under Section 306 of Indian Penal Code is punishable with imprisonment of either

description for a term, which may extend to ten years and also fine. It is required to be noted that it has to be established that there is an instigation to commit the offence or suicide and there has to be a conspiracy in which the petitioners have to be engaged to commit such an offence and should have aided the commission of offence. So far as the case in hand is concerned, the important piece of evidence that is required to be considered is the statement of Hiran Mule. The statement of said witness is required to be read as a whole and perusal thereof depicts a specific attribution against Sainath Agrawal, accused No.1 about non-repayment of installment of loan taken from Basic Finance Company, Nanded though deceased Balaji has paid Rs.13,000/- to accused No.1, Sainath. Hiran then narrates that the petitioners have abused deceased Balaji, which according to him, is based on the hearsay evidence, which was neither witnessed nor directly heard by him.

10. Apart from above, Hiran is not attributing specific role to the petitioners. The statement of the other witnesses, namely Manik Mule, Shivaji Mule, Gangabai Mule and Bhanudas speak of hearsay story.

11. In the background of above referred evidence, which is taken to be true at its face value, in my opinion, so far as the petitioners - accused are concerned, there is hardly any material to connect the

petitioners to the crime in question. It is required to be noted herein that there are omnibus allegations made against the petitioners and no specific attributions are stated in any of the statements. The only attribution against the petitioners is that all of them have abused and threatened the deceased Balaji by assaulting him.

12. It is really hard to believe the omnibus allegations made against the petitioners, particularly lady members. The said allegations are not in confirmity with that of medical evidence on record. Apart from above, the delay in lodging the F.I.R. and the implication of all the family members of the petitioners would also take this Court to draw an inference that there is every likelihood of false implication of the petitioners in the crime in question.

13. The investigation pinpoints the accusations of the crime in question against Sainath, who has also named in the dying declarations. It is further required to be noted herein that there has to be some active suggestion or support to the commission of offence of suicide. Even if it is presumed without admitting that the petitioners have abused deceased Balaji, however, it is really hard to infer that the said act on the part of petitioners has instigated or even anyway remotely was within the knowledge of the petitioners that deceased Balaji will commit suicide.

14. In this background, in my opinion, all the petitioners herein i.e. petitioners No.1 to 7 are entitled for discharge from the case in question.

15. As such, present Writ Petition stands allowed in terms of prayer clause (B), which reads thus :

“(B) *By an order of this Hon'ble Court and/or issuing appropriate writ or direction in the like nature of writ, the petitioners be discharged for the offences punishable U/s 306, 323, 504, 506 r/w 34 of I.P.C., in regards Sessions Case No.14/2013 pending before Ld. Additional Sessions Judge, Basmath, District Hingoli.”*

16. Rule made absolute in above terms.

(N.W. SAMBRE, J.)

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