

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

CRIMINAL APPLICATION NO. 4848 OF 2015

1. Kailas Bhata Shete.
2. Mohan Shamrao Shete.
3. Sachin Zumber Tirmali.
4. Ashok Yuvraj Tirmali.

All r/o. Chalisgaon, Tq. Chalisgaonn,
Dist. Jalgaon.

...Applicants

versus

The State of Maharashtra,
through Police Inspector,
Mehunbare Police Station,
Tq. Chalisgaon, Dist. Jalgaon.

...Respondent

**WITH
CRIMINAL APPLICATION NO.4941 OF 2015
IN
CRIMINAL APPLICATION NO. 4848 OF 2015**

Ankush s/o Bhaurao More,
Age: 40 years, Occ: Labour,
R/o. Tirpole, Tq. Chalisgaon,
Dist. Jalgaon.

...Applicant

versus

Kailas Bhata Shete & ors.

...Respondents

.....
Mr. V.D. Salunke, Advocate h/f Mr. Dhananjay B. Thoke, Advocate
for applicant
Mr. G.O. Wattamwar, A.P.P. for respondent/State
Ms. Asha N. Gore, Advocate for original complainant
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CORAM : N.W. SAMBRE, J.

DATE : 19th OCTOBER, 2015

ORAL ORDER :

Criminal Application No. 4941 of 2015 filed by original complainant to assist the prosecution is allowed.

2. The applicants are seeking regular bail in connection with Crime No. 29/2015 registered at Mehunbare Police Station, District Jalgaon for the offence punishable under Sections 302, 143, 146, 147, 148, 149, 323, 324, 504, 506 of the Indian Penal Code, Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and under Section 37(1)(3), 135 of the Bombay Police Act.

3. The prosecution story, in brief, are as under.

That the applicants herein being member of unlawful assembly have caused murder of one Lahu More, which incident rather took place in the background of elections of Member of Legislative Assembly.

4. While making out a case for grant of regular bail, Mr. Salunke, learned Counsel for the applicants would urge that even if the attributions against each of the applicant, as are stated by the eye witnesses are taken to be true at threshold, no case punishable

either under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or that of provisions of Indian Penal Code punishable under Section 302 could be made out, as cause for death Lahu is specifically attributed to two persons and not present applicants. So as to draw support, he has taken me through the statement of Dnyaneshwar and other witnesses.

5. While opposing the application for bail, learned A.P.P. would urge that there is *prima facie* evidence available against the applicants herein, who are admittedly member of unlawful assembly gathered with common object for committing murder. He would then urge that in view of availability of *prima facie* evidence against the applicants, they are not liable to be released on bail. According to him, the applicants since resident of same place, there is every likelihood that the applicants will tamper the evidence of the prosecution witnesses and there might be problem in the law and order. So as to substantiate this contention, he has drawn support of the judgment of the Allahabad High Court in the matter of ***Raju Mishra alias Rajiv Kumar vs. State of Uttar Pradesh [LAWS (ALL)-2009-5-360]*** and of Madhya Pradesh High Court in the matter of ***Prakash s/o Rustam vs. State of M.P.*** reported in ***1995 CRI.L.J. 869.***

6. While scanning the statement of each of the witnesses, it is required to be noted that if the accusations against the present applicants, as are made in the charge sheet, are taken to be true, still attributions against each of the applicant are not of assaulting or murdering deceased Lahu, but are assaulting the other persons who were present on the spot, for which, at the most the case punishable under Sections 323 and 324 of the Indian Penal Code could be considered.

7. Once the investigation in the matter is completed and the applicants are in magisterial custody, in my opinion, further detention of the applicants will be of hardly any assistance to the prosecution.

8. In the same crime, two other accused are already released on bail by this Court on 31/08/2015.

9. In view of above, it will be appropriate, in my opinion, to order the release of the applicants on bail. Hence, I propose to pass the following order.

10. The applicants be released on bail, upon furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen thousand) with one surety in the like amount, by each of the applicant, in connection with Crime No.

29/2015 registered at Mehunbare Police Station, District Jalgaon for the offence punishable under Sections 302, 143, 146, 147, 148, 149, 323, 324, 504, 506 of the Indian Penal Code read with Section 3(2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 37(1)(3), 135 of the Bombay Police Act.

11. The application is allowed in above terms.

[N.W. SAMBRE, J.]