

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

CRIMINAL APPLICATION NO. 5673 OF 2015

1. Shri. Vishwaraj @ Vishnu S/o Babusingh Tehra,
Age : 40 years, Occu. Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 2. Shri. Sujitsingh S/o Vijaysingh Tehra,
Age : 43 years, Occu. Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 3. Shri. Sudhirsingh S/o Satyanarayansingh Tehra,
Age : 38 years, Occu. Service,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 4. Shri. Satendrasingh S/o Sureshsingh Tehra,
Age : 31 years, Occu. Doctor,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
- ... Applicants

VERSUS

1. The State of Maharashtra,
 2. The Superintendent of Police,
Nanded.
- ... Respondents

.....
Mr V. D. Sapkal, Advocate for applicants
Mr S. J. Salgare, APP for respondent/State
Mr M. U. Ghatge, Advocate for complainant/intervenor.
.....

ALONG WITH

CRIMINAL APPLICATION NO. 5520 OF 2015

1. Shri. Satyanarayansingh S/o Govindsingh Tehra,
Age : 63 years, Occu. Agri & Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 2. Shri. Sureshsingh S/o Govindsingh Tehra,
Age : 55 years, Occu. Agri & Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 3. Shri. Kannayasingh S/o Govindsingh Tehra,
Age : 73 years, Occu. Agri & Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
 4. Shri. Bhagwansingh S/o Sundersingh Tehra,
Age : 55 years, Occu. Agri & Business,
R/o. Badi Madi, Gadipura, Nanded,
Dist. Nanded.
- ... Applicants

VERSUS

1. The State of Maharashtra,

2. The Superintendent of Police,

Nanded.

... Respondents

.....

Mr V. D. Sapkal, Advocate for applicants

Mr S. J. Salgare, APP for respondent/State

Mr M. U. Ghatge, Advocate for complainant/intervenor.

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CORAM : **INDIRA K. JAIN, J.**

DATE : **30TH NOVEMBER, 2015.**

PER COURT:

. These applications for pre-arrest bail are in Crime No. 151 of 2015 registered at Shivajinagar Police Station, Dist. Nanded for the offences punishable under Sections 306, 107 read with 34 of the Indian Penal Code.

2. Heard Mr V. D. Sapkal, learned counsel for applicants, Mr S. J. Salgare, learned APP for respondent/State and Mr M. V. Ghatge learned counsel for complainant / intervenor. Perused papers of investigation.

3. Prosecution case in brief is as under : -

Deceased Harish was son of complainant Maltibai

Sundersingh Tehra resident of Nanded. The family owned an agricultural land. In 2007 Government of Maharashtra acquired the said land for road. Applicants raised objections for disbursement of compensation amount in favour of husband of complainant and since then dispute arose between them.

4. On 16th April 2013 applicants Satyanarayansingh, Sureshsingh, Kannayasingh, Bhagwansingh and Sujitsingh entered the house of complainant. They raised quarrel on the land and threatened to kill complainant, her husband and children. Report was lodged by Advocate Smita daughter of complainant. It is alleged that since June 2013, applicants were continuously threatening to kill complainant and her family members and so her son Harish was tense. He used to tell his mother and other family members that applicants were obstructing him on the road and threatening to kill him. He was being convinced by his mother.

5. Incident occurred during the night of 14.05.2015 and 15.05.2015. On that day till 11:30 p.m. complainant Maltibai, daughter Smita and Harish were watching T.V. Harish was under stress and he disclosed to his mother that since last eight days he was being threatened by applicants and there is danger to his life.

Harish then went to sleep in his room.

6. On 15.05.2015 complainant and other members of family saw that Harish committed suicide by hanging himself to the roof of house. Shirish brother of Harish informed police about the death of Harish. A.D. was registered on the report of Shirish. On 22.09.2015 FIR was lodged on the basis of which above said crime came to be registered against the applicants.

7. According to applicants, there is inordinate delay in lodging FIR. No overt act is attributed to them. It is alleged that FIR was lodged to counter-blast the objections raised by applicants regarding apportionment of compensation. Mr Sapkal, learned counsel for applicants vehemently contended that in view of the order passed by the Division Bench of this Court on 10.07.2015 part of compensation amount was allowed to be withdrawn and being aggrieved thereof false complaint came to be lodged against the applicants.

8. In respect to the report lodged on 16.04.2013 applicants submitted that B-summary report has been filed before the learned Magistrate and order under Section 156(3) of the Code of Criminal Procedure passed by the learned Magistrate was also set aside by

the learned Sessions Judge, Nanded vide order dt. 19.06.2014 passed in Criminal Revision No. 67 of 2013. In this background learned counsel for applicants submitted that applicants have been falsely implicated and they be protected by granting anticipatory bail.

9. Per contra learned APP submitted that investigation is in progress, statements of material witnesses are yet to be recorded and in case applicants are granted the relief as claimed by them it would hamper the course of smooth investigation.

10. Mr Ghatge, learned counsel for complainant/intervenor made a grievance that investigation is not being conducted in a fair manner, applicants are influential persons and investigating agency could not even record statements of material witnesses so far. It is alleged that despite complaints in writing dt. 27.06.2015 and 17.07.2015 no action was taken against the applicants and this itself would show how influential are the applicants. Learned counsel strongly resisted the applications and prayed to reject the same.

11. So far as the grievances of complainant are concerned this Court vide order dated 16.11.2015 and 23.11.2015 directed the Superintendent of Police Nanded to enquire into the same and

submit report. Accordingly report dated 28.11.2015 is submitted by the Superintendent of Police. It shows that complainant and her relatives were contacted by investigating officer many times but they did not give their statements stating that they were in grief and their mental condition was not good to give statement. Report further indicates that action has been proposed against the erring officer and investigation is now handed over to SDPO and the same is in progress.

12. The principal question which needs to be addressed here is whether there exists a *prima facie* involvement of applicants in commission of alleged crime. As can be seen from FIR dispute arose between the parties after the award in land acquisition matter was passed. Incident occurred during the night of 14.05.2015 and 15.05.2015. Shirish, son of complainant reported the death to police and at the same time informed that they have no grievance against anyone regarding death of Harish.

13. Report was lodged on 22.09.2015 i.e. after more than four months of the incident. Even if it is considered for a moment that on 27.06.2015 and 17.07.2015 reports were submitted to police authorities then also there was considerable delay in lodging report.

14. As narrated in FIR Harish disclosed that since eight days he was being threatened and he apprehended danger to his life. If it was so timely report could have been lodged by the complainant.

15. Another important factor relates to cause of death. Post-mortem report shows cause of death as hanging associated with consumption of alcohol.

16. In the above premise and considering the previous dispute between the parties, inordinate delay in lodging FIR, reluctance of the witnesses to give timely statements as stated by Superintendent of Police in the Enquiry report dt. 28.11.2015 and the cause of death mentioned in Post-mortem report, at this stage *prima facie* involvement of applicants in commission of alleged crime appears to be doubtful. It is not the case in which custodial interrogation of applicants is necessary.

17. In this backdrop this Court is inclined to allow the applications. Hence the following order.

ORDER

- (i) Criminal Application Nos. 5673 of 2015 and 5520 of 2015 are allowed.

- (ii) In the event of arrest of applicants in Crime No. 151 of 2015 registered at Shivajinagar Police Station, Dist. Nanded for the offences punishable under Sections 306, 107 read with 34 of the Indian Penal Code, applicants Vishwaraj @ Vishnu S/o Babusingh Tehra, Sujitsingh S/o Vijaysingh Tehra, Sudhirsingh S/o Satyanarayansingh Tehra, Satendrasingh S/o Sureshsingh Tehra, Satyanarayansingh S/o Govindsingh Tehra, Sureshsingh S/o Govindsingh Tehra, Kannayasingh S/o Govindsingh Tehra and Bhagwansingh S/o Sundersingh Tehra shall be released on bail on their furnishing PR and SB of Rs. 15,000/- (Rupees Fifteen thousand) each.
- (iii) Applicants shall not tamper with the prosecution evidence and shall make themselves available as and when required by the Investigating Agency.
- (iv) Applicants shall keep themselves away from the jurisdiction of Shivajinagar Police Station and Limbgaon Police Station, Nanded for a period of one week from today to enable the Investigating Agency to record statements of witnesses.
- (v) Parties to act on authenticated copy of this order.

[INDIRA K. JAIN, J.]