

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

CRIMINAL APPLICATION NO. 5675 OF 2015

1. Sakharam s/o Narayan Surwase,
Age: 65 years, Occ: Agri.,
2. Parwatibai w/o Sakharam Surwase,
Age: 60 years, Occ: Household,
3. Pandurang s/o Sakharam Surwase,
Age: 25 years, Occ: Household,

All R/o. Shivani (Budruk), Tq. Ausa,
Dist. Latur.

...Applicants

versus

The State of Maharashtra.

...Respondent

...
Mr. S.S. Panale, Advocate for the applicants
Mr. S.M. Ganachari, Addl. Public Prosecutor for respondent
...

CORAM : N.W. SAMBRE, J.

DATE : 28th OCTOBER, 2015

ORAL ORDER :

Present applicants are seeking regular bail in Crime No. 69/2015 registered at Ausa Police Station, District Latur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, pursuant to the first information report dated 11/06/2015.

2. The prosecution story is that deceased Suvarna, daughter in law of applicant Nos. 1 and 2, was stoned to death by the applicants, in which her husband, applicant No. 3 brother of her husband and second wife of her husband are involved in the commission of crime.

3. While trying to make out a case for grant of bail, learned Counsel for the applicant would urge that the investigation in the matter is completed and charge sheet is already filed. According to him, the applicant Nos. 1 and 2 are arrested on 11/06/2015 and applicant No. 3 on 03/07/2015.

4. According to him, perusal of the charge sheet would depicts that so far as applicant Nos. 2 and 3 are concerned, role attributed to applicant No. 3 is presence at the spot of incident as is apparent from the statement of child witness Malhari, son of deceased, whereas role attributed to applicant No. 2 is that she was hitting deceased without any weapon. Said statement was recorded after more than ten days of the incident when he was in custody of his maternal uncle.

5. It is required to be noted that the role attributed to applicant No. 1 is that he has stoned the deceased along with her

husband. The star witness to the incident appears to be Malhari, son of deceased, who has stated that applicant No. 1- father in law of the deceased along with his son i.e. husband of deceased have stoned the deceased. So far as the said incident is concerned, statement of the said witness recorded under Section 164 of the Code of Criminal Procedure has improved version and narrated that all the accused have stoned the deceased. He would urge that so far as applicant No. 2 is concerned, role attributed to her is only about assault without any weapon and applicant No. 3 was a by-stander.

6. While opposing for grant of bail application, learned Additional Public Prosecutor has strenuously urged that looking to the injuries suffered by deceased which were grievous, which were cause for death, the only inference that could be drawn from the investigation papers is that, the applicants have committed crime in question. Learned A.P.P. has taken me though the statement of Malhari, child witness and his statement recorded under Section 164 of the Code of Criminal Procedure along with injury certificate. According to him, there is *prima facie* evidence available against the applicants.

7. Having scanned the entire evidence with the assistance of learned A.P.P. and learned Counsel for the applicants, it is required

to be noted here that in the statement of child witness Malhari, son of the deceased, has attributed specific role to his father and grandfather. So far as applicant Nos. 2 and 3 are concerned, role attributed is that of assault simplicitor by applicant Nos. 2, and 3 mere witness to the incident. In my opinion, so far as applicant Nos. 2 and 3 are concerned, there is hardly any evidence available on record so as to connect the applicants to the commission in crime or to hold them responsible for the death of deceased.

8. Though learned A.P.P. was right in pointing out as regards grievous injuries suffered by the deceased and cause of death, however, it is required to be taken note of the investigation that only one stone weighing 10.6 kg. is seized from the spot. The story of defence appears to be that it is because of fall on the stone from the roof, the deceased has suffered grievous injuries which might have rolled on her body causing serious injuries.

9. So far as applicant No. 1 is concerned, in my opinion, it is really hard to believe that the applicant No. 1 who is aged about 65 years was indulged in the act of killing his daughter in law alongwith his son.

10. Looking to the age of applicant No. 1 and in view of

provisions of Section 437 of Code of Criminal Procedure, it will be appropriate, in my opinion, to grant bail to applicant No.1 also, as the investigation in the matter is completed and charge sheet is already filed.

11. 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 :-

The applicants be released on bail, upon executing the P.R. bond of Rs.10,000/- (Rs. Ten thousand) with one surety in the like amount by each of them, in connection with Crime No. 69/2015 registered at AUSA Police Station, District Latur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code

12. The application stands allowed.

[N.W. SAMBRE, J.]