

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

Criminal Application (ABA) No.5/2015  
Prabhakar s/o Ganpatrao Bele Vs. State of Maharashtra.

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Notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's  
Orders.

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Shri R.M. Daga, Advocate for the applicant.  
Ms. Jachak, APP for the non-applicant/State.

**CORAM : PRASANNA B.VARALE, J.**  
**DATE : FEBRUARY 25, 2015.**

Heard Shri Daga, the learned counsel for the applicant and Ms. Jachak,  
the learned APP for the non-applicant/State.

The applicant apprehending his arrest in Crime No.179/2014 registered  
with Police Station, Rajura for offence punishable under Section 304 of the Indian  
Penal Code is before this Court.

In view of the submission of the learned counsel while issuing notice this  
Court by order dated 9<sup>th</sup> January, 2015 granted ad-interim protection to the  
applicant.

Perused the report lodged at the instance of the Police Official Shri  
Rathod. The incident as reflected in the report is of an electrocution in the  
agricultural field of the applicant. The agricultural labourers working in the field of  
the applicant one Prabhakar Bele, on 28.9.2014, was proceeding to attend  
nature's call by crossing the barred wire compound of the agricultural field of the

applicant in that process he received an electric shock causing his death. The accident to death was initially registered. In the inquiry, it revealed that the applicant to prevent the wild animals by drawing the electric energy passed the energy through the barred wire. The learned counsel for the applicant Shri Daga submits that the incident is alleged of 28.9.2014 and the report is lodged at very belated stage on 24.12.2014 against the applicant for the offence punishable under Section 304 of the I.P. Code. He submits that it is not even the case of the Investigating Agency that there was any mischief played by the applicant for drawing the electric energy. There is no offence registered against the applicant for committed either any breach or offence under the Indian Electricity Act. He further submits that even assuming the case as it is reflected in the report do not admitting the same, it would be, at the most, case of an accident that too for which the applicant cannot be held responsible. The learned counsel submits that the applicant is resident of village Rajura and earning his livelihood by agricultural activities. The applicant is ready to extend cooperation to the investigating Agency and there is no need of custodial interrogation of the applicant. Shri Daga placed reliance on the judgment of the Hon'ble Apex Court in the case of **State of Rajasthan Vs. Chhittarmal** reported in (2007) 3 SCC (Cri)696. By inviting my attention to the said judgment Shri Daga submits that the applicant stands on better footing than the accused in the matter of State of Rajasthan Vs. Chhittarmal (supra).

The learned APP Ghodeswar opposes the application. The learned APP submitted that in the collection of material during the investigation process, the spot panchanama was drawn showing that the applicant near to his compound

fencing erected a wire fencing hardly 2 feet away from the ground. He further submits that the medical evidence in the nature of P.M. report shows that the skin of the victim turned black as a sign of electrocution. Thus, the submission of the learned APP that the victim died due to electric shock and the electric energy was drawn by the applicant passing through the wire compound.

On perusal of the reply filed by the State and other material, though the learned APP vehemently opposes the application and though the medical evidence show that death is due to the electric shock. The material is totally silent on the aspect whether the agency collected the material from the Energy Department to show that the electric energy was drawn authorisedly or otherwise. If so, whether the offence is registered against the applicant for breach of the Indian Electricity Act. These questions are unanswered. Shri Daga, the learned counsel, was justified in placing the reliance on the judgment of the Apex Court and submitting that the applicant stands on better footing. The Apex Court on the backdrop of similarly circumstances and accepting the defence that the energy was supplied to the compound to prevent the wild animals, dismissed the appeal filed by the State. Shri Daga was also right in submitting that the applicant is on better footing on the backdrop of the fact that in the matter of State of Rajasthan Vs. Chhittarmal (supra), it was the case of the prosecution that there was an enmity and with a revengeful act the electricity energy was supplied causing electrocution of the victim. The learned counsel for the applicant thus made out a case for grant of protection in the nature of pre-arrest bail. The apprehension of the State can be taken care of by imposing conditions. Interim order passed by 9<sup>th</sup> January, 2015 is confirmed, with a condition that the applicant to attend Rajura Police Station on

every 2<sup>nd</sup> and 4<sup>th</sup> Sunday from 9.00 to 12.00 noon and maintained a diary duly counter signed by the I.O. or the Police Station Officer, till filing of the charge-sheet.

**JUDGE**

*Ambulkar*