

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

CRIMINAL APPLICATION NO. 804 OF 2016

Sunil s/o Baburao Patil,
Age: 22 years, Occ: Agri.,
R/o. Kokalgaon, Tq. Degloor,
Dist. Nanded. ...Applicant

versus

The State of Maharashtra
Through Police Station Markhel,
Tq. Degloor, Dist. Nanded & anr. ...Respondents

WITH

CRIMINAL APPLICATION NO. 854 OF 2016

Subhash s/o Sangappa Hatte,
Age: 48 years, Occ: Agri.,
R/o. Kokalgaon, Tq. Degloor,
Dist. Nanded. ...Applicant

versus

The State of Maharashtra
Through Police Station Markhel,
Tq. Degloor, Dist. Nanded & anr. ...Respondents

WITH

CRIMINAL APPLICATION NO. 853 OF 2016

Jagannath s/o Hanmantrao Patil,
Age: 52 years, Occ: Agri.,
R/o. Kokalgaon, Tq. Degloor,
Dist. Nanded. ...Applicant

versus

The State of Maharashtra
Through Police Station Markhel,
Tq. Degloor, Dist. Nanded & anr. ...Respondents

.....
Mr. S.V. Warad, Advocate for applicants
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 3rd MARCH, 2016

ORAL ORDER :

All these applicants are seeking pre-arrest bail in Crime No. 35 of 2015 registered with Markhel Police Station, District Nanded for the offence punishable under Sections 302, 143, 147, 148, 149, 324 of the Indian Penal Code, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 7(1)(d) of the Protection of Civil Rights Act. The alleged incident has taken place on 19/11/2015.

2. The prosecution case against present applicants is that the applicants having formed an unlawful assembly have assaulted deceased Maroti, his brother complainant Chandrakant, and one Vitthal with stones thereby resulting into death of Maroti and complainant Chandrakant and Vitthal suffered serious injuries.

3. The charge sheet in the matter is already filed under Section 299 of Code of Criminal Procedure against the applicants, as the applicants are shown to have been absconded.

4. In this background, learned Counsel for the applicants, while trying to make out a case for grant of pre-arrest bail, would

urge that the applicants are innocent and falsely implicated in the crime in question. He would then urge that so far as applicant Sunil Baburao Patil in Criminal Application No. 804 of 2016 is concerned, he is working as a driver on Ambulance operated by the office of the Medical Officer, Primary Health Centre, Hanegaon, Taluka Degloor, District Nanded and on the day of incident, the applicant Sunil was on duty and sought support from his attendance register. He would then submit that except omnibus allegations of hitting deceased and other injured with stones, no specific role is attributed.

5. The next submission so far as applicant Jagannath Hanmantrao Patil in Criminal Application No. 853 of 2016 is concerned, it is required to be noted that Jagannath was shown to have been cited as panch witness in Sessions Case No. 12 of 2000, wherein the complainant Chandrakant was convicted and had undergone rigorous imprisonment for two years and as such, according to him, applicant Jagannath is falsely implicated as an accused. He would further submit that applicant Jagannath is the person, who has hospitalized the deceased Maroti after altercations in question took place.

6. So far as applicant Subhash Sangappa Hatte in Criminal Application No. 854 of 2016 is concerned, applicant Subhash though

named as an accused, however, there is no role attributed against him in the crime and there are omnibus allegations including that of assault by stones and crime under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

7. Learned Counsel for the applicants submits that there are no criminal antecedents as against present applicants and the incident in question took place out of differences in the matter of digging bore-well in temple premises. It was never intention of any of the accused to commit murder of Maroti or injured the complainant Chandrakant or Vitthal, having regard to the nature of weapon alleged to have been used in the crime in question.

8. Learned A.P.P. while inviting my attention to the provisions of Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, so as to canvass bar in entertaining pre-arrest bail application, would urge that the injured persons namely Chandrakant and Vitthal have specifically named present applicants in the crime in question. He would then submit that custodial interrogation of the applicants is necessary, looking to the nature of attributions against them and at the behest of applicants, stones are required to be recovered. He would then submit that plea of *alibi* as is raised cannot be gone into at this stage.

9. With the assistance of learned Counsel, perused the contents of the charge sheet. No doubt, the injured witnesses namely Chandrakant and Vitthal have named present applicants as accused persons, who have participated in the crime in question and have used stones to assault the concerned persons, however, it is required to be noted that specific role is attributed to Suresh Kavatge, who has injured the complainant Chandrakant by hitting stone on his forehead. So far as applicants and other accused are concerned, there are omnibus allegations of participation in the crime in question. The complainant has named in all 11 accused in the first information report, who have participated in the offence in question and use of stones. If the corresponding injuries in post mortem report are considered, it cannot be inferred that the applicants are responsible for crime in question. Apart from above, applicant Jagannath was panch witness in Sessions Case No. 12 of 2000 and the said sessions case has resulted into conviction of the complainant, is also required to be taken into consideration as false implication of applicant Jagannath, at the behest of complainant, who has undergone imprisonment, cannot be ruled out.

10. So far as applicant Sunil Patil is concerned, who is named as Sumit Patil in the first information report, appears to be a

public servant working as a driver with the Health Department, as such, there is hardly any likelihood of his running away from the investigation.

11. So far as applicant Subhash is concerned, there are general allegations against him and no specific role is attributed to him.

12. Looking to the nature of omnibus allegations against the applicants, in my opinion, it will be appropriate to order the release of the applicants, particularly having regard to the fact that there are no criminal antecedents and charge sheet in the matter is already filed. Hence, the following order:-

(a) In the event of arrest, the applicants be released on bail, in Crime No. 35 of 2015 registered with Markhel Police Station, District Nanded for the offence punishable under Sections 302, 143, 147, 148, 149, 324 of the Indian Penal Code, under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 7(1)(d) of the Protection of Civil Rights Act, upon executing P.R. bond of Rs.25,000/- with one surety in the like amount, by each of them.

(b) The applicants shall attend the concerned police station on 10th, 11th, 12th and 13th March, 2016 between 10-00 a.m. and 12-00 noon and thereafter as and when called by the Investigating Officer.

(c) The applicants shall not tamper with the prosecution evidence.

13. All criminal applications stand allowed in above terms.

[N.W. SAMBRE, J.]