

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

CRIMINAL APPLICATION NO. 856 OF 2016

Bhagwan s/o Kisan Charwande,
Age: 43 years, Occ: Agri.,
R/o. Kobapur, Tq. Gangapur,
Dist. Aurangabad.

...Applicant

versus

The State of Maharashtra
Through Police Station,
Gangapur, Dist. Aurangabad.

...Respondent

WITH

CRIMINAL APPLICATION NO. 1224 OF 2016

IN

CRIMINAL APPLICATION NO. 856 OF 2016

Ushabai w/o Shyamsing Meher,
Age: 25 years, Occ: Household,
R/o. Kohapur, Tq. Gangapur,
Dist. Aurangabad.

...Applicant

versus

The State of Maharashtra & anr

...Respondents

.....
Mr. N.S. Ghanekar, Advocate for applicant in Criminal
Application No. 856 of 2016
Mr. D.V. Tele, A.P.P. for respondent/State
Mr. S.S. Ladda, Advocate to assist A.P.P.
.....

CORAM : N.W. SAMBRE, J.

DATE : 14th MARCH, 2016

ORAL ORDER :

Heard.

2. For the reasons stated in the application, Criminal Application No. 1224 of 2016 seeking permission to assist learned Additional Public Prosecutor is allowed.

3. Applicant Bhagwan Kisan Charwande was arrested on 10/06/2015 in Crime No. I-104 of 2015 registered with Gangapur Police Station, District Aurangabad, for the offence punishable under Section 302, 143, 147, 148, 149 of Indian Penal Code, for the alleged incident dated 02/06/2015, which according to the complainant, occurred around 8-30 p.m. to 9-30 p.m. in her field.

4. It is the case of complainant Ushabai that her husband Shyamsing (deceased) had an altercation in relation to the right of way on the same day morning. It is then claimed that the complainant thereafter had been to the police station. Before visit to the police station, it is claimed that present applicant has threatened deceased Shyamsing with dire consequences/death threat. Thereafter, the complainant and present applicant have settled the matter amongst themselves and withdrawn the complaint, which was lodged with the police station.

5. It is further claimed that when her husband visited for watering the crop in the field, he did not return by around 8-00 p.m. to

8-30 p.m. the applicant went to the field and noticed the body of her husband Shyamsing hanging with rope to the tree and present applicant along with other accused persons were present there. The complainant noticed presence of present applicant along with other eight persons with the help of light from her battery and as such, lodged complaint on 03/06/2015 that the applicant is amongst one of the accused, who has murdered her husband.

6. While trying to make out a case for grant of regular bail, Mr. Ghanekar, learned Counsel for the applicant fairly invites attention of this Court to the earlier order passed by this Court, whereby the applicant's bail application was withdrawn. He would then submit that there are two grounds, which are required to be taken into account and those are, other accused are already released on bail, against whom somewhat similar type of allegations were there and the applicant needs immediate medical attention in view of ailing health, as he is suffering chronic uncontrolled diabetics, for which he was hospitalized after his arrest.

7. Learned Counsel then would invite attention of this Court to the fact that probability of involvement of the applicant, as is alleged upon perusal of first information report would go to show the story narrated by the complainant as regards the incident in question is improbable. According to him, the complainant Ushabai is

claiming to be an eye witness to the incident, which has occurred between 8-30 p.m. to 9-30 p.m. in dark, that too, in the field, where she has noticed in all nine accused and identified all of them in the light of torch, who ran away from the spot. He would urge that all other accused but for the applicant are released on regular bail and having regard to the fact that investigation in the matter is complete and charge sheet is already filed, further detention of the applicant, in the above back ground, particularly his ailing health, is uncalled for. He would submit that there are no criminal antecedents apart from the present case and the applicant shall abide all terms and conditions as shall be imposed.

8. Learned A.P.P. opposed the application on the ground that apart from complainant Ushabai, there is one more eye witness namely Manoj. With the assistance, I have perused the statement of Manoj, in the back ground of first information report. Learned A.P.P. would then urge that the applicant is not entitled for bail, in view of the fact, there are no subsequent developments after earlier application for grant of regular bail was withdrawn, as this Court was not convinced to allow the same. According to him, the fact about injuries suffered by deceased Shyamsing are also required to be taken note of, for which the applicant also owes explanation and in view of earlier quarrel between the parties, there is strong suspicion

against the applicant in a serious crime for the offence punishable under Section 302 of Indian Penal Code.

9. Mr. Ladda, learned Counsel for the complainant, in addition to the argument canvassed by learned A.P.P., would submit that there are specific injuries suffered by the deceased, which speak of violent act on the part of applicant before the incident in question, i.e. death of deceased Shyamsing. Mr. Ladda would urge that earlier dispute between the parties in relation to right of way and fact that earlier quarrel was settled and applicant has signed settlement deed speaks of criminal intention of the applicant and as such, there is *prima facie* case as regards his involvement in the crime in question.

10. I have bestowed my thought to the submissions made. It is not in dispute that apart from present crime, there is no other criminal history as against present applicant. The applicant has made categorical statement to that effect in paragraph-13 of the application, which is not denied by the complainant or prosecution.

11. Apart from above, if the prosecution story as is narrated in the first information report is noticed, it is to be noted that event in question has occurred in between 8-30 p.m. to 9-30 p.m. in the night and the complainant has noticed the accused persons in the light of

battery. She claims to be an eye witness to the incident. However, there is another eye witness, who is claimed to have noticed the present applicant along with other co-accused, who have committed the crime in question i.e. Manoj. Manoj, though in specific terms mentioned that the accused was present there, however, the presence of Manoj itself is doubtful and his statement was recorded on 04/06/2015 and his presence was specifically not mentioned in the first information report. Apart from above, it is required to be noted that there exist enmity between the applicant and deceased Shyamsing on the ground of right of way. The said enmity, has in fact, resulted into a quarrel on earlier day, which was taken to the police station and it is claimed by the complainant that there was death threat by the applicant to deceased Shyamsing, still the deceased and complainant have proceeded to settle the matter. The injuries as are mentioned in the post mortem report, in my opinion, could have been caused out of earlier quarrel, which admittedly took place, as is reflected from the investigation papers. Leave apart, the other accused are already released on bail on the same set of facts and evidence on record.

12. *Prima facie*, it appears to be the case of suicide and so far as homicidal death of deceased Shyamsing is concerned, in the above referred back ground, *prima facie*, it is difficult to infer about

the same.

13. In view of above, the applicant deserves to be enlarged on bail. Hence, the following order:-

The applicant be released on bail, in connection with Crime No. I-104 of 2015 registered with Gangapur Police Station, District Aurangabad, for the offence punishable under Section 302, 143, 147, 148, 149 of Indian Penal Code, upon furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

14. Criminal Application No. 856 of 2016 stands allowed in above terms.

[N.W. SAMBRE, J.]