

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

CRIMINAL APPLICATION NO.1100 OF 2016

Badri s/o Punjaram Dange,
Age 35 years, Occu. Agri.,
R/o Lohgaon, Taluka Paithan,
District Aurangabad

..Applicant

Versus

The State of Maharashtra,
through Police Station, Bidkin,
Taluka Paithan, Dist.Aurangabad

..Respondent

Mr S.J. Salunke, Advocate for applicant
Mr S.P. Deshmukh, A.P.P. for respondent
Mr C.K. Shinde, Advocate for complainant, assisting the A.P.P.

- WITH -

CRIMINAL APPLICATION NO.1286 OF 2016

1. Dnyaneshwar s/o Murlidhar Ithape,
Age 47 years, Occu. Agriculture
2. Jayabai w/o Dnyaneshwar Ithape,
Age 32 years, Occu. Household,
Both r/o Lohagaon, Taluka Paithan,
District Aurangabad

..Applicants

Versus

. The State of Maharashtra,
The Commissioner of Police
Both to be served through DGP
Office, High Court of Bombay,
Bench at Aurangabad

..Respondents

Mr S.G. Ladda, Advocate for applicants
Mr S.P. Deshmukh, A.P.P. for respondents

CORAM : N.W. SAMBRE, J.

DATE : 29th February 2016

PER COURT

Heard.

2. The applicants are seeking pre-arrest bail in Crime No.32 of 2016, registered at Bidkin Police Station, District Aurangabad, for the offences punishable under Sections 201, 302 read with Sec.34 of Indian Penal Code.

3. The prosecution case against the present applicant is that daughter of complainant Ramrao, namely Pushpa was married to applicant No.1 - Dnyaneshwar in Criminal Application No.1286 of 2016. The applicant No.2 - Jayabai in the said application is second wife of Dnyaneshwar. With the consent of first wife Pushpa, Dnyaneshwar married with second wife Jayabai, as complainant's daughter Pushpa was unable to begot the child. As a part of security, Dnyaneshwar has transferred part of his immovable property in favour of Pushpa, so as to secure her financially in her future life.

4. The prosecution then claimed that Pushpa went missing some time on 6th August 2014 resulting into lodging of missing report with the Police authorities. It is not in dispute that till date, whereabouts of Pushpa are not traced.

5. The complainant Ramrao's another daughter namely Sharda, who is residing in the same village informed the complainant that the applicant No.2 in Criminal Application No.1286 of 2016 namely Jayabai was having illicit relations with applicant in Criminal Application No.1100 of 2016 namely Badri. It is further claimed that all the applicants hatched a conspiracy and have murdered Pushpa and also destroyed the evidence resulting into registration of crime punishable under Sections 201, 302 of the Indian Penal Code.

6. While trying to make out the case for grant of pre-arrest bail, learned Counsel Mr Salunke for the applicant Badri would urge that applicant is falsely implicated in the crime in question, as he has hardly any connection with the crime, as alleged. He would then urge that apart from delay in lodging the F.I.R., the basis as is formed to the delayed F.I.R. is information given by the daughter of the complainant. He would further urge that even perusal of the investigation papers would depict that complainant Ramrao has filed Criminal Writ Petition before this Court seeking appropriate investigation in the matter. He would then urge that the custodial interrogation of the applicant is not necessary, particularly based on the bald allegations made in the F.I.R.

7. Mr Ladda, learned Counsel for the applicants in Criminal Application No.1286 of 2016 would urge that the applicants are husband and wife and with the consent, Pushpa, the daughter of complainant Rama, the applicant Dnyaneshwar has performed second marriage by transferring a part of his holding so as to secure her financially. He would then urge that the applicants have made every effort to trace out deceased Pushpa and the fact about the delayed F.I.R. at the behest of information provided by real sister of Pushpa, who is residing in the same village speaks of after thought story.

8. Learned A.P.P. opposed the prayer for grant of pre-arrest bail to the applicants on the ground that the matter qua the investigation is already subjudice in a Criminal Writ Petition wherein upon intervention

of this Court, investigation is handed over to higher Officer. Learned A.P.P. then would urge that the investigation as is carried out till date, has not resulted into tracing deceased Pushpa or her whereabouts. According to him, the applicants Dnyaneshwar and Jayabai were the persons with whom Pushpa was residing. It is only upon custodial interrogation of the applicants, the whereabouts could be found, as the applicants are not co-operating in the investigation.

9. Learned Counsel for the complainant Mr Shinde also adopted the arguments made by learned A.P.P. and submits that the custodial interrogation of the applicants is necessary, as the applicants will be in a better position to tell about the whereabouts of Pushpa.

10. With the assistance, I have perused the investigation papers. The fact remains that till date, whereabouts of Pushpa or her body is not traced. The alleged incident is claimed to have been happened some time on or about 6th/7th August 2014. Since then though the investigation is going on whereabouts of Pushpa could not be noticed.

11. Apart from bald allegations as regards the illicit relation between applicant Jayabai with Badri, there is hardly any material on record to connect the present applicants to the crime in question. The F.I.R. came to be lodged and the crime is registered based on certain inputs received in the village. However, the applicants are not charged with serious offence under Section 302 of the Indian Penal Code based on such inputs, but only on suspicion.

12. In the above background, in my opinion, it will be appropriate to protect the present applicants.

13. As such, both the Criminal Applications stand allowed. In the event of their arrest in Crime No.32 of 2016, registered at Bidkin Police Station, District Aurangabad, for the offences punishable under Sections 201, 302 read with Sec.34 of Indian Penal Code, the applicants be released on bail, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount, by each of them.

14. The applicants shall attend the Investigating Officer on 12th March 2016 between 10.00 a.m. and 12.00 noon and thereafter the Investigating Officer will be at liberty to call the applicants, as jointly or individually for the purpose of investigation.

15. It will be worth to observe here that in case any evidence is noticed against the present applicants about their involvement in the crime in question, the investigating Officer will be at liberty to apply for cancellation bail of the applicants, before this Court.

(N.W. SAMBRE, J.)

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