

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application no. 1741 of 2016

(Prashant s/o Deelip Jadhav and Anr. Vs. The State of Maharashtra)

AND

Criminal Application no. 1834 of 2016

(Deelip s/o Jagannath Jadhav Vs. The State of Maharashtra)

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

Court's or Judge's orders

Mr. S.G. Magare, advocate for applicants in both the Criminal applications.
Mr. Umeshchandra Jadhav, Special Public Prosecutor for State.

CORAM : N.W. SAMBRE, J.

DATED : 14th JUNE, 2016.

Both these applications are preferred by the accused seeking regular bail in Crime No.316/2014 registered on October 21, 2014 for an offence punishable under sections 302, 201, 34 of the Indian Penal Code. The alleged incident which has resulted into registration of offence took place in between 20th to 21st October, 2014. The facts as are necessary for deciding the present applications are as under -

One Jagannath Jadhav was blessed with two sons namely Deelip and Sanjay. Deelip was married to Sharda whereas Sanjay was married to Jayashree. Deelip and Sharda were blessed with two sons namely Prashant and Ashok, the applicants in application No. 1741/2016 and Sanjay and Jayashree were blessed with a son by name Sunil who at the relevant time was taking education in Bombay in a Dairy Development Course.

Both Deelip and Sanjay were agriculturists by profession and were residing in the same village.

So far as the case in hand is concerned, it is alleged by the prosecution that the present applicants have murdered their blood relations namely Sanjay, his wife Jayashree and son Sunil. All the three applicants are named and arrested in the above referred crime.

It is required to be noted that the applicants and the deceased were belonging to the backward class community.

The prosecution case as against the present applicants is that the late Sunil, son of deceased Sanjay and Jayashree was having illicit relations with Sharda wife of Deelip i.e. his aunt and same has resulted into serious differences between the families of two real brothers namely Deelip, an accused-applicant before this court, and late Sanjay. It is then claimed that when the above illicit relations were noticed by Deelip and his two sons, a threat was issued to the family of Sanjay asking them to control the said activities of Sunil.

It is then claimed that all the applicants have murdered Sanjay, his wife Jayashree and son Sunil. It is also claimed that the evidence in the matter was sought to be destroyed as the body of the deceased Sunil was cut into parts with the help of saw and same was dumped in a bore-well in the field of David Jadhav. It is then claimed that the body of deceased Sunil without hands and legs along with that of dead bodies of Jayashree and Sanjay was noticed in a well.

In the above background when initially the matter was noticed by one Hirabai Arjun Wagh, a neighbour, she on

phone informed to Sharda – wife of applicant – accused Deelip about the disappearance of, Sanjay and his family members which has resulted into their search. It is then informed by the complainant to the police that the dead bodies were noticed at about 4 p.m. on 21st October, 2014.

The applicant Prashant is an accused and also complainant in the crime in question.

Upon perusal of the investigation papers i.e. charge sheet which is already filed, it is required to be noted that initially the investigation was misdirected by the present applicant being complainant so as to get rid off their criminal liability and the entire incident was given color of the caste enmity and hatred.

In the above background, after filing of the charge sheet, the present applications are moved seeking regular bail.

The applicant Deelip in Criminal Application No. 1834/2016 is father of the applicants in Criminal Application No. 1741/2016.

Heard Shri Magre, the learned counsel for the applicants and Shri Umeshchand Jadhav Special Public Prosecutor on behalf of the State. While trying to make out a case for grant of bail, the learned counsel for the applicants would submit that the investigation in the present matter depicts that the case is based on the circumstantial evidence. He would then urge that there are no eye witnesses to the incident in question and it is only upon suspicion the present

applicants are detained in the present crime for more than two years. He would then submit that as the investigation in the matter is complete as the charge sheet is filed, the applicants be released on bail. In addition, the learned counsel would urge that the applicants are falsely implicated in the crime in question and so as to substantiate the same has invited attention of this Court to the fact that the applicants themselves have requested the State Government to carry out investigation by an independent agency like State CID or CBI. He would then submit that so as to protect the main accused who are from upper caste, the present applicants are made scape goat and with a bias are roped in as accused. Shri Magare, the learned counsel for the applicants in addition would submit that the case in question is likely to take substantial time and further detention of the applicants particularly based on circumstantial evidence is uncalled for. He would then add that if released, they shall abide by all such terms and conditions including such stringent conditions as shall be imposed by this Court.

The learned Special Public Prosecutor while opposing the applications would submit that the present applicants are not entitled to be released particularly having regard to the seriousness of the offence in which they are involved in. He would submit that if the approach on the part of the applicants particularly during the investigation of the crime in question is to be looked into, the applicants have tried to misdirect the investigation by colour of caste hatred. The learned Special Public Prosecutor would add that the applicants have tried to destroy the evidence and entire investigation including that of narco analysis test depicts about the prima-facie involvement of the applicants in the

crime in question. He would then submit that the witnesses are the residents of the same place and there is every likelihood that the applicants may tamper with the evidence and if released in the heinous offence, same will have adverse impact. According to him, the applications need to be rejected.

With the assistance of respective counsels, I have perused the entire charge sheet including that of the narco analysis test of the accused persons and the other aspects.

It is required to be noted that the applicants have tried to rely upon the affidavit of Ravindra Jadhav, Deelip Jadhav accused, Sharda Deelip Jadhav, Ashwini Deelip Jadhav so as to substantiate the contentions that the applicants are falsely implicated in the crime in question. He would then invite my attention to the complaint lodged with the police authorities about the offer of the cash amount to the witnesses depicting false implication.

From the above background, the learned counsel though has sought to impress upon this Court to claim that they are falsely implicated, however, this Court cannot lose sight of the order passed by the Division Bench of this Court on January 7, 2016 in Criminal Writ Petition No. 158/2015 wherein the prayer for transfer of investigation in the aforesaid crime to the CBI came to be rejected. The Division Bench of this Court has already gone into the claim of the applicants of bias investigation and the prayer of the applicants to that effect is already turned down. Apart therefrom, in the background of prayer for bail, the said contention of the applicants about false implication and

biased investigation is re-looked into.

Merely because the applicants have come out with a case by way of affidavits as regards offer of money made by the Investigating Officer, the request of the applicants for transfer of investigation to C.B.I., who is already turned down by the Division Bench of this Court, in my opinion, no ground for release of the applicants on biased or *mala fide* investigation is made out. Rather, the investigation depicts motive of the applicants to commit the crime in question, in the background of illicit relation of Sunil with Sharma and the threats issued by the applicants to the family of deceased Sanjay.

Apart from above, it is required to be noted that the accused herein have come out with a case of their false involvement based on the circumstantial evidence. It will not be out of place to mention here that at the behest of accused Prashant there is discovery under section 27 of the Evidence Act narrating the entire commission of the offence along with his companions with a common intention by executing the plan. The motive for commission of the crime appears to be the illicit relations between deceased Sunil with that of Sharda. It is then to be noted that upon house search, the weapons which were used in the commission of the crime in question such as Khocha which is an agricultural instrument, a sickle, hand made hexagon, axe were seized along with the clothes.

There is a discovery of the place where the incident in question took place at the behest of one of the applicants before this Court.

The post mortem report confirms the cause of injury by the weapon like khocha.

The manner and mode in which the heinous crime in question is committed and the evidence is destroyed is required to be taken into account. The dead body of deceased Sunil is cut into pieces and part thereof was dumped in a bore-well whereas the remaining body was thrown in a well along with that of the bodies of deceased Sanjay and Jayashree. The post mortem report depicts of injuries suffered by the deceased persons which appear to be cause of death; as is reflected from the investigation papers. The injuries as were suffered were ante-mortem as is reflected from the medical documents.

If the cumulative effect of the evidence collected during investigation is taken into account particularly the history of differences between Deelip and Sanjay and as regards behaviour of deceased Sunil towards Sharda and the confrontations between accused and the deceased prior to the incident, the other incriminating circumstances such as the discovery of the place of incident, the recovery of the weapons and the clothes of the accused, the narcotic analysis test, in my opinion prima facie depict involvement of the accused persons in the crime in question.

The learned respective counsels have relied upon catena of judgments so as to impress upon this court to submit that the court can grant conditional bail as the investigation in the matter is complete. A support is sought to be drawn from the judgments of Apex Court in the matter of Sanghian Pandian Rajkumars Vs. Central Bureau of

Investigation and another reported in (2014) 12 SCC 23, Sanjay Chandra Vs. Central Bureau of Investigation reported in (2012) 1 SCC 40 and Maulana Mohd. Amir Rashadi Vs. State of U.P. and another reported in 2012 Cri.L.J. 1444. In my opinion the same will be of hardly any assistance to the present applicants particularly in the background of what has been observed herein above and also for the reasons for consideration thereof mentioned in the judgment of the learned Sessions Judge. As such, both these applications fail and are rejected.

JUDGE