

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1994 OF 2016

KHANDERAO S/O MADHAVRAO HOTTGIR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Dhananjay M. Shinde.

APP for Respondent : Mr. M. B. Bharaswadkar.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 27th April, 2016.

ORDER:

. This is an application for regular bail in Crime No.22 of 2016 registered at Kurunda Police Station, District Hingoli for the offences punishable under Sections 306, 392 and 506 (II) read with 34 of the Indian Penal Code and Section 3(1)(r)(s)(za)(E) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Applicants are in custody since 13th March, 2016.

2 Heard the learned counsel for parties. Perused investigation papers.

3 First informant Shakuntalabai Hatkar is the wife of deceased Satwa. Satwa was running a fair price shop. It is alleged that on 19th

February, 2016 at around 09:00 a.m. Applicant Nos.1 to 4 had been to fair price shop of Satwa. They asked him to come for a meeting. When Satwa attended meeting, Applicants insisted him to deliver them goods in fair price shop on Government rate. It is alleged that thereafter on many occasions all the Applicants were harassing Satwa and insisting him to deliver goods in fair price shop to them on Government rate.

4 Incident took place on 10th March, 2016 at 10:00 a.m. in the house of Satwa. According to prosecution on that day at 08:00 a.m. when Satwa and first informant Shakuntalabai were present in the shop Accused came there and again insisted Satwa to deliver goods in the fair price shop else they would cancel his permit. They abused him on caste and also threatened to life. Due to the act of Accused, Satwa poured kerosene on his person and set him on fire. He succumbed to burn injuries on the same day at 06:15 p.m. in the hospital.

5 On the report of wife of Satwa crime was registered against Applicants. It can be seen from police papers that dying declaration of Satwa was recorded by Police Officer on the same day between 04:00 and 04:30 p.m. Learned APP on instructions makes a statement that dying declaration was not recorded by Executive Magistrate and adds

that there was no time to summon the Executive Magistrate. It is pertinent to note that incident took place at 10:00 a.m. Victim succumbed to injuries at 06:15 p.m. If dying declaration could be recorded between 04:00 and 04:30 p.m. by police officer it was not difficult for investigating agency to request the Executive Magistrate to record the statement of victim.

6 Further it can be seen from allegations in FIR and the statement of victim recorded by police officer that victim was being harassed by Applicants for not delivering goods in fair price shop and so he committed suicide. From the facts narrated in FIR and statement of victim if taken as they are, it would be difficult at this stage to accept that prosecution has a case against Applicants for the offence punishable under Section 306 of the Indian Penal Code.

7 So far as offence under Section 392 of the Indian Penal Code is concerned, it appears from papers of investigation that one bag each has been recovered at the instance of Accused Vasant and Gajanan.

8 Considering the nature of offences alleged, severity of punishment and since major part of investigation is over this Court is inclined to enlarge the Applicants on bail. Hence the following order –

ORDER

- I. Criminal Application No.1994 of 2016 is allowed.
- II. Applicants are released on bail in Crime No.22 of 2016 registered at Kurunda Police Station, District Hingoli for the offences punishable under Sections 306, 392 and 506 (II) read with 34 of the Indian Penal Code and Section 3(1)(r)(s)(za)(E) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) each.
- III. Applicants shall not tamper with the prosecution evidence and shall make themselves available as and when required for investigation.
- IV. Bail before the Trial Court.

[INDIRA K. JAIN, J.]