

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3070 OF 2016
WITH APPLN/3991/2016 IN APPLN/3070/2016

(1) Gangubai w/o Shivaji Kachave
(2) Yashoda w/o Munjaji Kachave
Versus
The State of Maharashtra

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Advocate for Applicant Mr. Ghatol Patil Shahaji B.
APP for Respondents: Mr. C.V. Dharurkar
Advocate for original complainant :Mr. N.R. Pawade (for Assist to P.P.)
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CORAM : V. K. JADHAV, J.
DATED : 20th JULY, 2016

PER COURT:-

1. Application to assist public prosecutor is allowed. Application is accordingly disposed of.
2. Heard the learned counsel for the applicant and learned A.P.P. for the respondent-State.
3. Read the application. Perused the investigation papers. On the basis of complaint lodged by one Yogesh Bhausahab Patil (son of deceased) dated 14.5.2016, crime No. 0059 of 2016 came to be registered at Daithana police station, District Parbhani for the offences punishable under Sections 307 (subsequently converted in Section 302), 326, 323, 504 r.w. 34 of I.P.C. It has alleged in the complaint that on the day of incident, the applicant No.1 Gangubai

invited all concerned persons for effecting partition of ancestral property in her farm house on 12.5.2016. At that time, co-accused Munjaji demanded additional two acres of land under the pretext that he had offered water to his grandmother at the time of her death. On that count, the quarrel had taken place and in the said quarrel, said accused Munjaji gave stone blow to deceased Bhausahab on his head and behind the ear. It has also alleged in the complaint that the present applicants threw chilly powder in the eyes of deceased Bhausahab, servant Laxman and tractor driver Sakharam. On the basis of these allegations, the present applicants came to be arrested on 14.5.2016 and since then they are in jail. Thus the applicants have preferred this application for bail. Their application with similar prayer is rejected by Additional Sessions Judge, Parbhani by order dated 24.5.2016 in Criminal Misc. (Bail) No. 226 of 2016.

4. Learned counsel for the applicants submits that the applicant No.1 is old aged lady and applicant No.2 is suffering from cancer and prior to one month of incident, her uterus was removed. As per the contents of the complaint, incident had taken place all of a sudden without any premeditation when the applicants and other persons assembled in the farmhouse for talks of effecting partition of the ancestral property. Furthermore, in the given set of allegations, at

the most, ingredient of Section 323/324 has been attracted against them. The medical evidence does not support the allegations made in the complaint against the applicants that they threw chilly powder in the eyes of deceased as well as some other persons present at the time of incident. There is no question of absconding as such and both the applicants will abide the conditions if imposed by this Court to avoid the possibility of tampering with the prosecution evidence.

5. Learned A.P.P. submits that there is strong prima case against both the applicants. Both of them have actively participated in the crime. They threw chilly power in the eyes of deceased and some other persons and thereafter co-accused Munjaji gave blow of stone on the head of deceased Bhausahab.

6. It appears from the contents of the complaint that the alleged incident had taken place all of a sudden without any premeditation. In such type of allegations, individual acts of the persons involved in the incident are usually considered. In the case in hand, there are only allegations against the present applicants that they threw chilly powder in the eyes of deceased Bhausahab and some other witnesses, however, there is no medical evidence to support the prosecution case to that extent. Furthermore, applicant No.1 is old aged woman and applicant No.2 is suffering from cancer and her uterus is removed. In view of above, I am inclined to release both

the applicants on bail by imposing certain conditions. Hence, the following order:-

- I) The application is hereby allowed.
- II) The applicant No.1 Gangubai Shivaji Kachave and applicant No.2 Yashoda Munjaji Kachave be released on bail in connection with crime No. 0059 of 2016 registered at Daithana police station, District Parbhani for the offence punishable under Section 307 (subsequently converted in Section 302), 326, 323, 504 r.w. 34 of I.P.C. on furnishing P.R. bond of Rs.20,000/- (Rupees Twenty thousand only) each with one solvent surety in the like amount on following conditions:-
 - a) The applicants shall not tamper with the prosecution evidence in any manner.
 - b) The applicants shall make themselves available as and when required by the Investigating Officer.
 - c) Bail before the trial court.

7. Criminal application for bail is disposed of.

(V. K. JADHAV, J.)

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