

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3141 OF 2016

1] Bhausing S/o Lobha Rathod,
Age 66 years, Occu.: Agri.,
R/o Ambewadi, Tq. Pathardi,
District - Ahmednagar

2] Parasram S/o Lobha Rathod,
Age : 62 years, Occu.: Agri.,
R/o Ambewadi, Tq. Pathardi,
District - Ahmednagar

.. Applicants

Vs.

The State of Maharashtra

.. Respondent

Mr. N.K. Kakade, Advocate h/f Mr. D.R. Markad, Advocate for
the applicants

Mr. S.M. Ganachari, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.

DATE : 25/11/2016

ORAL ORDER :

Heard.

2. By the present application, the applicants seek their release on bail, as they have been arrested in connection with Crime no. 126 of 2016 registered at Pathardi Police Station, Dist. Ahmednagar for the offences punishable under Section 302, 307, 436, 427 r/w. 34 of the Indian Penal Code.

3. As per the FIR dated 6/4/2016, it is stated by the informant – Sheela, that after the death of her husband prior to 10 years, she was residing alongwith her brother. There was some dispute between her uncles i.e. the applicants and her brother with regard to fetching of water from a well. It is stated that on the previous day, when she was asleep at night, the applicant no.1 – Bhausing Rathod had poured kerosene on her body while applicant no.2 – Parasram Rathod had set her on fire. The informant's brother had come there and had extinguished the fire. On that basis, initially offence under Section 307 r/w. Section 34 of the Indian Penal Code came to be registered. Subsequently, the informant expired on 9/4/2016 on account of 95% burns. On that basis, offence punishable under Section 302 of the Indian Penal Code was also added. After completion of the investigation, chargesheet came to be filed. Both the applicants, who have been arrested with regard to the said crime, have moved the present application.

4. It is submitted by learned counsel for the applicants that they have been falsely implicated in the aforesaid crime. There was no dispute whatsoever with

regard to fetching of water from the well. According to the learned counsel, though the dying declaration was recorded, there was various infirmities in the same. The patient was said to be fit after examination on 6/4/2016, but the dying declaration is shown to have been recorded on the previous day i.e. 5/4/2016. It is then submitted that the deceased was undergoing treatment for some psychological problem and, therefore, act of committing suicide by her, cannot be ruled out. Reference is also made to the statement of one Dilip Rathod, in which it is stated by him that he had seen one person running away when he had come there to extinguish the fire. It is submitted that since the chargesheet has been filed and the entire investigation is over, the applicants deserve to be released on bail.

5. The application is opposed by learned Additional Public Prosecutor. It is submitted that both the applicants have been named in the dying declaration and, therefore, the application deserves to be rejected. The legal value of the dying declaration is a matter to be considered during trial. It is therefore submitted that the Application deserves to be dismissed.

6. Perused the FIR as well as the chargesheet. The medical papers indicate that the deceased had suffered 95% burn injuries. The dying declaration *prima facie* indicates that the patient was medically examined on 6/4/2016, but it has been stated in the dying declaration that the same was recorded on 5/4/2016. Statement of Dilip Rathod indicates presence of one person running away.

7. As according to the applicants, the deceased was undergoing psychological treatment, this Court on 28th July, 2016, had directed the learned Additional Public Prosecutor to place on record the investigation in that regard. In that regard, the learned Additional Public Prosecutor has relied upon subsequent statements of family members of the deceased, which indicate that she was undergoing treatment of one Dr. Karandikar. As per said Dr. Karandikar, though the patient was called for subsequent examination, the deceased did not turn around for the said treatment. The certificate issued by Dr. Karandikar indicates that deceased was suffering from psychotic disorder.

8. In the aforesaid background and considering the fact that chargesheet has been already filed, coupled with the age of both the applicants, who are shown to be 62 years and above, I am inclined to allow the present application.

9. In view aforesaid discussion, the following order :-

ORDER

I) Criminal Application is allowed.

II) The applicants are directed to be released on bail in Crime no. 126 of 2016 registered at Pathardi Police Station, District - Ahmednagar for the offences punishable under Section 302, 307, 436, 427 r/w. 34 of the Indian Penal Code, upon furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount, by each of them.

III) The applicants shall not enter Ambewadi village, Tq. Pathardi, District - Ahmednagar, till the trial is completed.

IV) The applicants shall co-operate in the progress of the trial before the Sessions Court.

V) The applicants shall not take any steps to influence the prosecution witnesses.

10. It is made clear that the present observations are only for the purposes of deciding the Bail Application.

11. Criminal Application is allowed in the aforesaid terms and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/