

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3812 OF 2016

- 1] Kashinath S/o Bhivsen Hulgunde
2] Mandabai Kashinath @ Bhivsen Hulgunde
3] Dattatraya S/o Kashinath Hulgunde .. Applicants

Vs.

The State of Maharashtra .. Respondent

.....
Mr. R.R. Karpe, Advocate for the applicants
Mr. S.D. Ghayal, APP for the respondent-State
.....

CORAM : N.W. SAMBRE, J.
DATE : 25/07/2016

ORAL ORDER :

Heard.

2. The applicants are seeking pre-arrest bail in Crime no.I-05 of 2016 registered at Jamkhed Police Station, Dist. Ahmednagar for the offences punishable under section 307 r/w. 34 of the Indian Penal Code.

3. The prosecution story as against the present applicants is that applicant no.3 – Dattatraya and one Balasaheb, happens to be the sons of applicant no.1 – Kashinath and applicant no.2 – Mandabai. Balasaheb was married to Manisha, who was seeking partition and separate possession of the property, which has resulted into differences between Manisha on one side and the applicants and Balasaheb on the other side.

4. It is then claimed that on January 7, 2016, victim – Mainsha was set ablaze by all the applicants alongwith Balasaheb, resulting into registration of the crime in question.

5. Accused Balasaheb – husband of Manisha, who was arrested in the crime in question, has suffered burn injuries including that of her mother-in-law – Mandabai. Balasaheb is ordered to be released on regular bail by the learned Additional Sessions Judge, Ahmednagar vide order dated June 17, 2016.

6. The investigation in the matter is already complete and chargesheet is filed.

7. In the above referred background, Shri Karpe, learned counsel for the applicants would submit that the custodial interrogation of the applicants is not necessary, as according to him, the required material i.e. the match-box alongwith the kerosene container is already seized. He would then submit that applicant no.2 – Mandabai suffered injuries while trying to extinguish Manisha and differences between Manisha and the applicants are apparent from the contents of the FIR, wherein Manisha admittedly narrated about the same. He would then urge that accused – Balasaheb since is already released on bail and the applicants are available for all the practical purposes including that of prosecution, the applicants be released on pre-arrest bail.

8. Learned A.P.P. opposed the application on

the ground that there is a dying declaration, which attributes specific role to each of the applicants. He would then submit that there is a *prima facie* material qua the statement of the victim on the record, which *prima facie* involves the applicants in the crime in question. He would then submit that the applicants are absconding and as such their application needs to be rejected.

9. Having bestowed thoughts to the submissions made, it is not in dispute that the investigation in the matter is already over and the chargesheet is filed. The chargesheet depicts that the kerosene container and the match-box which are used in the commission of the crime are already recovered. Applicant no.2 – Mandabai and other accused – Balasaheb have suffered burn injuries, which from the investigation papers, appears to have been caused while trying to extinguish Manisha.

10. The dispute between Manish and the

applicants is apparent from the contents of the FIR as in the FIR, Manisha has specifically narrated about her claim in the property and independent possession of her share. Apart from above, the fact remains that applicant no.1 – Kashibai and applicant no.2- Mandabai are the aged persons.

11. Dying declaration of other accused – Balasaheb, who is already released on bail, speaks of the manner in which the incident took place.

12. Chargesheet in the matter is already filed. Statements of the respective witnesses are available on the record. But for the statement of the victim, there is no independent material on the record to connect the present applicants as regards their *prima facie* involvement in the commission of crime in question.

13. Apart from above, the dying declaration of Balasaheb goes contrary to the dying declaration of victim – Manisha. In the above background, once

Balasaheb is already released on regular bail and the investigation in the matter is complete, there hardly remains anything to be recovered from the applicants.

14. It is required to be noted that victim – Manisha has implicated all the family members of her husband as accused in the crime in question. This Court can not ignore the burn injuries suffered by applicant no.2 – Mandabai, which perhaps were caused while trying to extinguish Manisha.

15. In this background, having regard to the age of the applicant no.1 – Kashinath, the burn injuries suffered by applicant no.2 – Mandabai and the fact that all the family members are named as accused, in my opinion, the Application needs to be allowed. Hence, the following order :-

16. In the event of the arrest of the applicants in Crime no.I-05 of 2016 registered with Jamkhed Police Station, Dist. Ahmednagar for the

offences punishable under section 307 r/w. 34 of the Indian Penal Code, they be released on bail upon their executing P.R. bonds in the sum of Rs.15,000/- (Rs. Fifteen Thousand) each with one surety each in the like amount.

17. The applicants shall attend the concerned Police Station initially between 4th and 7th August, 2016 between 10 am and 12 noon and, thereafter, as and when called by the Investigating Officer.

18. The applicants shall not tamper with the prosecution evidence or influence the witnesses in any manner.

19. Criminal Application stands disposed of accordingly.

[N.W. SAMBRE]
JUDGE

arp/-