

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 3874 of 2016

District : Jalna

1. Siddheshwar s/o. Baliram Shingade,
Age : 31 years,
Occupation : Agriculturist.
2. Baliram s/o. Bapurao Shingade,
Age : 45 years,
Occupation : Agriculturist.

Both R/o. Kasarwadi,
Taluka : Ambad,
District : Jalna.

.. Applicants.

versus

1. The State of Maharashtra.
2. The Superintendent of Police,
Jalna
(Through Ambad Police Station,
District : Jalna)

.. Respondents.

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*Mr. Swapnil Joshi, Advocate, instructed by
J.P. Legal Associates, for applicants.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 31ST AUGUST 2016

ORAL ORDER:

Applicants Siddheshwar Shingade and Baliram Shingade, who are accused in Crime No. 39/2016, for offences punishable under Sections 302, 307, 498A, 201, 323, 504, read with Section 34 of the Indian Penal Code, registered with Police Station, Ambad, District Jalna, at the instance of Radhabai w/o. Siddheshwar Shingade, by this application, are seeking their release on bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for applicants / accused. By drawing my attention to supplementary statement of informant Radhabai Shingade, the learned Counsel argued that tendency of exaggeration is writ large from her supplementary statement. He further argued that though axes are attributed to accused persons, recovery is only from applicant no.2 Baliram Shingade and that too a stick. The learned Counsel further drew my attention to statement of Dnyaneshwar Kharat who is named in the FIR and submitted that applicant Siddheshwar Shingade was not present at the spot at the time of the incident. With this, according to the learned Counsel for applicants, further pre-trial detention of applicants is not warranted.

3. The learned Addl. Public Prosecutor opposed the application by submitting that statement of

informant Radhabai Shingade prima facie shows complicity of both applicants in the crime in question.

4. Perused the record made available. Applicant Siddheshwar is husband of informant Radhabai Shingade, whereas applicant Baliram is father-in-law of informant Radhabai Shingade. Deceased Shobhabai Bhagwan Khadekar is mother of informant Radhabai Shingade.

5. In the FIR lodged by Radhabai Shingade on 15.03.2016, informant Radhabai Shingade alleged that she and her mother Shobhabai went to her matrimonial house on 15.03.2016 and when they reached there at about 11.00 to 11.30 a.m., they found her matrimonial house locked. As per version of the informant in the FIR, after some time both applicants accompanied her brother-in-law Kumar and mother-in-law Sumitrabai came there armed with axes. Her brother-in-law Kumar assaulted her by means of axe, whereas her husband i.e. applicant Siddheshwar and her father-in-law i.e. applicant Baliram assaulted her mother Shobhabai by means of axes. FIR shows that these two accused gave blows of axes on head of deceased Shobhabai. The informant further reported that because of her shouts, Shankar Bhoite from the village rushed on the spot and took them to the hospital. Then, in her supplementary statement recorded on 25.03.2016, informant Radhabai exonerated her brother-in-law

Kumar by stating that Kumar was not present at the scene of occurrence. At the same time, she added embellishment to her version by stating that her father-in-law Baliram Shingade, mother-in-law Sumitrabai Shingade and husband Siddheshwar Shingade assaulted her mother Shobhabai by means of axes and sticks. In supplementary statement informant Radhabai also averred that apart from axes, present applicants were also holding sticks. With this, the learned Counsel for applicants argued that version of Radhabai is not reliable. However, we are at pre-trial stage and *falsus in uno falsus in omnibus* is a concept alien to criminal jurisprudence in our country.

6. At the same time, tendency of exaggeration is reflected from version of Radhabai. Therefore, one will have to go by surrounding circumstances reflected from the charge-sheet. FIR reveals that witness Shankar Bhoite rushed to the spot soon after the incident. His statement reveals that when he visited the spot, he saw Shobhabai as well as Radhabai in injured condition. This witness states presence of applicant Baliram as well as his mother on the spot. Witness Shankar Bhoite, who rushed to the spot soon after the incident, is not disclosing presence of Siddheshwar on the spot. In this context, post mortem report of deceased Shobhabai assumes importance. Perusal of post mortem report of Shobhabai reveals that she had suffered only one

injury on her head. Apart from injury to head, deceased Shobhabai did not suffer any other injury on any other part of her body. Injury on her head is in the nature of contused lacerated wound of 9 cm X 2.5 cm. and cause of her death is shown to be due to cardio-respiratory arrest because of head injury. Thus, axe does not appear to have been used in the crime in question though the same is attributed to accused persons. There is single blow to the deceased. Presence of applicant no.1 Siddheshwar was not witnessed by the witnesses named in the FIR. In view of this position of evidence against applicant no.1 Siddheshwar, his further pre-trial detention is not warranted.

7. At this stage, when the Court was not inclined to grant the relief, so far as applicant no.2 Baliram is concerned, the learned Counsel for the applicants seeks permission to withdraw the Application to the extent of applicant no.2 Baliram.

8. Hence, I pass the following order :-

(a) The Application is partly allowed.

(b) The Application so far as it relates to accused / applicant no.2 Baliram s/o. Bapurao Shingade is disposed of as withdrawn.

(c) Accused / applicant no.1 Siddheshwar s/o. Baliram

Shingade, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 15,000/- and on furnishing one or more solvent sureties of the like amount.

(d) As a condition of this order, applicant no.1 Siddheshwar Shingade shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(e) Applicant no.1 Siddheshwar Shingade shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(f) Applicant no.1 Siddheshwar Shingade shall not repeat commission of similar type of offences in future.

9. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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