

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

Criminal Application No. 4499 of 2016

District : Beed

1. Shaikh Juber Shaikh Ejaz,
Age : 29 years,
Occupation : Agriculture,
R/o. Vidyanagar,
Barshi Road, Beed.
2. Shaikh Raziya w/o. Shaikh Ejaz,
Age : 50 years,
Occupation : Service / Teacher,
R/o. as above. .. Applicants.

versus

The State of Maharashtra,
through In-charge
Beed City Police Station,
Beed. .. Respondent.

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Ms. A.N. Ansari, Advocate, for applicants.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

*Mr. S.S. Jadhavar, Advocate, for the original
complainant.*

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CORAM : A.M. BADAR, J.

DATE : 23RD AUGUST 2016

ORAL ORDER:

Applicants / accused in Crime No. 146/2016,

for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, registered with City Police Station, Beed, District Beed, at the instance of Shaikh Ejaz s/o. Shaikh Imam, by this application, are praying for pre-arrest bail.

2. Deceased Badrunnisa Begum w/o. Shaikh Imam is mother of complainant Shaikh Ejaz s/o. Shaikh Imam. The complainant is father of applicant no.1 Shaikh Juber and husband of applicant no.2 Shaikh Raziya.

3. Heard the learned Counsel appearing for applicants / accused. She argued that the crime in question allegedly took place on 20.02.2013 and the FIR on the basis of order passed under Section 156(3) of the Code of Criminal Procedure, 1973, came to be lodged on 20.04.2016. The learned Counsel argued that recitals in the FIR itself shows that the FIR is filed because of dispute regarding ancestral property.

4. Heard the learned Addl. Public Prosecutor appearing for the respondent - State. By drawing my attention to statements of witnesses recorded in May 2016, the learned Addl. Public Prosecutor argued that witnesses are stating that they had seen ligature mark on the neck of deceased Badrunnisa in February 2013. They are also stating that froth was oozing

out of her mouth.

5. The alleged incident of homicidal death of Badrunnisa took place on 20.02.2013. Recitals in the FIR goes to show that complainant Shaikh Ejaz had left his family comprising of applicant no.1 Shaikh Juber (son) and applicant no.2 Shaikh Raziya (wife) long back in the year 2002. He went to Mumbai where he married again with another woman. FIR shows that the complainant had not disclosed his whereabouts to his first wife and son. Recitals in the FIR further goes to show that there is ancestral property in the nature of an agricultural field and two storied house.

6. Complainant Shaikh Ejaz is alleging that present applicants had forcibly got signatures on blank papers from deceased Badrunnisa and they committed her murder by pressing her neck. These averments are totally hearsay. Why witnesses, who had allegedly noticed strangulation mark and oozing froth from mouth of the deceased, had not disclosed the incident to Police, is not explained in papers of investigation. Considering the dispute over the immovable property, possibility of false implication of applicants cannot be ruled out. Even otherwise, as the crime in question took place on 20.02.2013, custodial interrogation of applicants would not bring out any fruitful result.

7. Considering the nature of evidence against present applicants, their custodial interrogation is not warranted. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The interim order dated 12th August 2016, granting ad interim anticipatory bail to applicant no.2 - Shaikh Raziya w/o. Shaikh Ejaz, is confirmed on the same terms and conditions.

(c) Both applicants / accused, in the above crime, in the event of their arrest, be released on bail on their executing P.R. Bond in the sum of Rs. 15,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(d) As a condition of this order, both applicants shall attend concerned Police Station on 28th August 2016 and 4th September 2016, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation. Both applicants shall cooperate with the Investigating Officer in investigation of the crime in question.

(e) Applicants 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.

(f) Applicants shall not tamper with the prosecution evidence in any manner.

(g) Applicants shall not repeat commission of similar type of offences in future.

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

(A.M. BADAR)
JUDGE

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