

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

**910 CRIMINAL APPLICATION NO. 4508 OF 2016
WITH
APPLN/4809/2016
IN
APPLN/4508/2016**

**SAMADHAN S/O MAHADU WAVLE
& ANR.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.S.Jadhavar, Advocate for Applicants.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 30th AUGUST, 2016

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PER COURT :

1. Applicants Samadhan s/o Mahadu Wavle and Mahadu s/o Malhari Wavle, who are accused in Crime No. 30/2016 registered at Charthana police station, Dist. Parbhani for the offences punishable u/ss 302,307,120-B,342 read with 34 of the Indian Penal Code at the instance of Anil Bajirao Wavle by this application are praying for releasing them on bail after filing of the charge sheet.

2. Heard learned counsel for the applicants. By

drawing my attention to the F.I.R. lodged by Anil Bajirao Wavle on 02/03/2016, learned counsel argued that no role in the crime in question is attributed to applicant No. 2 Mahadu s/o Malhari Wavle, but for the first time on 06/03/2016 typed written application was submitted to the police station in order to add 2 more persons including applicant No. 2 Mahadu Wavle as accused in the crime in question. It is further argued that considering the material from the charge sheet, it can not be said that accused persons were having intention to kill members of the prosecuting party. Sharp edged weapons are not used in the commission of crime in question.

3. Learned A.P.P. opposed the application by contending that statements of Champabai Wavle and Limbabai Wavle show the role played by present applicants in the crime in question. She argued that accused persons by indulging in conspiracy, killed Bajirao Wavle and Milind Wavle and, therefore, they are not entitled for bail.

4. I also heard the learned counsel for the informant.

5. Perused the charge sheet including the report lodged by injured Anil Bajirao Wavle on 02/03/2016. The incident in question took place after 4.00 p.m. on 01/03/2016 in the field. According to the informant, accused persons viz. Rambhau Wavle, Babasaheb Wavle, Samadhan Wavle and Rahul Suryawanshi came when he as well as his father Bajirao

and brother Milind were going to their field. According to the informant, Rambhau Wavle was holding stick, Babasaheb Wavle and Rahul Suryawanshi were holding Koyta and applicant Samadhan s/o Mahadu Wavle was holding stones. They all then assaulted his brother Milind and father Bajirao. Informant Anil averred that when the quarrel was going-on, applicant No. 2 Mahadu Wavle was standing at the long distance and witnessing the incident. The informant further reported that all assailants then flee from the spot and after hearing the sound of quarrel, his relatives viz. Diksha and Champabai Wavle came there.

6. Charge sheet shows that Bajirao and Milind died homicidal death in this incident. Milind had suffered at least 7 external injuries, whereas Bajirao had suffered 5 external injuries.

7. So far as applicant No. 2 Mahadu Wavle is concerned, active role came to be attributed to him for the first time on 06/03/2016, when informant Anil Wavle had submitted type written application to the police station mentioning that apart from original accused named by him, applicant No. 2 Mahadu Wavle and one accused Rahul Shinde had participated in the assault by holding Koyta and an Axe. Champabai has also stated in her statement on 05/03/2016 that Mahadu Wavle had assaulted her husband Bajirao and son Milind. Limbabai has stated that applicant No. 2 Mahadu Wavle was holding an axe and all accused persons assaulted Bajirao and Milind. This statement was also recorded on

05/03/2016.

8. So far as applicant No. 2 Mahadu Wavle is concerned, first version of the prosecution case, as reflected from the F.I.R. lodged by injured Anil Wavle, shows that he was just a by-stander watching the incident by standing at a long distance. Subsequently, type written application appears to be prepared on 05/03/2016 and presented to the police on 06/03/2016 adding applicant No. 2 Mahadu Wavle and one another person as assailants in the crime in question. Informant Anil Wavle, who himself has suffered injuries, had ample opportunity to watch the incident. After watching the incident, he had lodged report to police, not attributing any overt act to applicant No. 2 Mahadu Wavle. In the wake of this evidence against applicant No. 2 Mahadu Wavle, his further pre-trial detention is not warranted.

9. So far as applicant No. 1 Samadhan Wavle is concerned, apart from injured informant Anil, other eye witnesses are also naming him as assailant, who had used stone for assaulting deceased Bajirao and Milind. The injuries found on the dead body *prima facie* depict intention of the assailants and, therefore, it can not be said that the accused persons including applicant No. 1 Samadhan Wavle was not having any intention to commit murder of 2 persons, who died in this incident. As the offence alleged against applicant No. 1 Samadhan Wavle is punishable either with death sentence or life imprisonment, no case for bail is made out so far as he is concerned. Hence, the following order.

- (i) The application is partly allowed.
- (ii) Applicant No. 2 Mahadu s/o Malhari Wavle in Crime No. 30/2016 registered at Charthana police station, Dist. Parbhani for the offences punishable u/ss 302,307,120-B,342 read with 34 of the Indian Penal Code be released on bail on executing P.R. Bond of ₹ 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.
- (iii) As a condition of this Order, Applicant No. 2 Mahadu s/o Malhari Wavle shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.
- (iv) Applicant No. 2 Mahadu s/o Malhari Wavle shall not tamper the evidence of the prosecution.
- (v) Applicant No. 2 Mahadu s/o Malhari Wavle shall co-operate the trial Court in the expeditious disposal of trial against him.
- (vi) Application of Applicant No. 1 Samadhan s/o Mahadu Wavle stands rejected.

[A.M.BADAR, J.]