

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

Criminal Application No. 4676 of 2016

District : Aurangabad

Harishkumar s/o. Jitu Chandaliya,
Aged : 19 years,
Occupation : Education,
R/o. Plot No.90, Bajaj Nagar,
Aurangabad. .. Applicant.

versus

The State of Maharashtra,
Through P.S.O., P.S.,
M.I.D.C., Waluj, Aurangabad. .. Respondent.

With

Criminal Application No. 4757 of 2016

District : Aurangabad

Chandan s/o. Mahavir Tak,
Aged : 28 years,
Occupation : Job,
R/o. Plot No. 103/5,
Bajaj Nagar, Aurangabad. .. Applicant.

versus

The State of Maharashtra,
Through P.S.O., P.S.,
M.I.D.C., Waluj, Aurangabad. .. Respondent.

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Mr. Rupesh A. Jaiswal, Advocate, for applicants.

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

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CORAM : A.M. BADAR, J.**DATE : 30TH AUGUST 2016****ORAL ORDER:**

Applicants / accused namely, Harishkumar s/o. Jitu Chandaliya and Chandan s/o. Mahavir Tak, in Crime No. 212/2016, for offences punishable under Sections 302, 307, 452, 324, 143, 147, 148, 149, 427, 504 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act, registered with Police Station, MIDC, Waluj, District Aurangabad, by these applications, are praying for release on bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for applicants / accused. He argued that none of the applicants is figuring in the FIR. He further argued that applicants were called at the Police Station on several occasions and they were interrogated but were not arrested. By drawing my attention to the remand application, the learned Counsel argued that it was on 19.05.2016, on the basis of information provided by co-accused Pradip Bidlan, Police claimed to have got knowledge of involvement of applicants in the crime in question. Therefore, in submission of the learned Counsel for applicants, statements of witnesses implicating present applicants, recorded by

the investigator are not reliable. The learned Counsel further argued that applicants have no criminal antecedents and applicant Harishkumar Chandaliya is a student of Engineering. In order to demonstrate that grant of bail is a general rule and gravity of offence is not the only criteria for rejection of bail, the learned Counsel relied on following judgments :-

- (i) Judgment of the learned Single Judge of Himachal Pradesh High Court, in the case of **Jeet Ram Vs. State of Himachal Pradesh** [2003 Cri.L.J.-0-736].
- (ii) Judgment of the learned Single Judge of Karnataka High Court, in the case of **Mohammed Aleemulla Vs. State of Karnataka** [2014 CJ(Kar) 648].
- (iii) Judgment of the learned Single Judge of Karnataka High Court (Bengaluru Bench), in the case of **Nagaraju & others Vs. The State of Karnataka & others** [2015 CJ(Kar) 86].
- (iv) Judgment of the learned Single Judge of the High Court of Bombay, in the case of **Tanaji Ravji Shinare Vs. The State of Maharashtra** [2013 CJ(Bom) 2339].
- (v) Judgement of the learned Single Judge of the High Court of Bombay, in the case of **Janu @ Billa Malappa Pawar Vs. The State of Maharashtra** [2006 ALL MR (Cri) 2577].
- (vi) Judgment of Division Bench of the High Court of Bombay, in the case of **Satyanarayan Vithal Ambat Vs. The State**

of Maharashtra [2006 ALL MR(Cri) 2578].

(vii) Judgment of the learned Single Judge of the High Court of Bombay, in the case of **Pradeep Shivaji Shinare Vs. The State of Maharashtra** [2013 ALL MR(Cri) 1317].

3. The learned Addl. Public Prosecutor opposed applications

4. Perused the charge-sheet. The FIR which has resulted in registration of the crime in question was lodged by Sunita Azad Duglaj on the day of incident i.e. on 03.05.2016 itself. Sunita was having two sons by name, Atish and Ganesh (since deceased). She has two daughters by name, Aarti and Sonam. Aarti married Naresh Jogiram Chandaliya, whereas Sonam married his brother Sunil Jogiram Chandaliya. Accused persons are from members of Chandaliya family and their friends. As seen from the charge-sheet, Naresh Chandaliya and Sunil Chandaliya had deserted their wives Aarti and Sonam and, therefore, they were residing with their mother Sunita. It is seen from the charge-sheet that Aarti had lodged report against her in-laws which has resulted in registration of crime against members of Chandaliya family.

5. The charge-sheet also reveals that on 02.05.2016, members of Chandaliya family assaulted Atish Duglaj - brother of Aarti and Sonam in a brutal

manner.

6. According to the prosecution case, accused persons including present applicants formed an unlawful assembly with common object of committing murder of Ganesh and Atish - brothers of Aarti and Sonam over the matrimonial dispute of Aarti and Sonam with their in-laws - Chandaliya family. It is seen from the FIR as well as statement of victim Atish, that accused persons on 03.05.2016, after forming unlawful assembly, accused trespassed in the house of Aarti and Sonam and brutally assaulted their mother - informant Sunita Duglaj and their brothers Ganesh and Atish. Ganesh died homicidal death at the hands of accused persons, whereas Atish suffered injuries in the incident.

7. True it is that names of both applicants are not figuring in the FIR, but the incident of murderous assault on members of the prosecuting party took place in several places inside their house including the terrace. Ganesh was murderously assaulted by chasing him at the terrace of the house, whereas Atish was assaulted at front room of the house. There were several assailants. The FIR is lodged by mother of Aarti and Sonam, who herself was assaulted in the incident.

8. Statements of Rani Chandaliya and Wajid

Pinjari prima facie reflects complicity of both applicants in the crime in question. They had conspired to attack parental family members of Aarti and Sonam and accordingly they armed themselves. Sonam is inmate of the house where the incident had happened. She appears to have locked herself in the kitchen of the house and witnessed the incident from there. Her statement reveals that both the applicants were keeping watch at the gate of the house of the informant and they were not allowing the residents to come to rescue members of the prosecuting party. Apart from that, Sonam has averred that both applicants were throwing bricks at Ganesh who was at the terrace. The charge-sheet reflects that Ganesh was murderously assaulted at the terrace and ultimately he succumbed to the injuries.

9. Nature of offence, circumstances in which the offence is committed, nature of evidence and impact of the crime on the society are prime considerations for granting bail. In the case in hand, Aarti and Sonam were married to brothers from Chandaliya family which is accused in this crime. Aarti and Sonam are alleged to have been subjected with cruelty by their in-laws and ultimately Aarti and Sonam took shelter of their parental house. A day prior to the incident, their brother Atish was severally assaulted by members of Chandaliya family and on the very next day, parental house of Aarti and

Sonam was raided by accused persons from Chandaliya family and their friends and ultimately, their brother Ganesh lost life and another brother as well as mother suffered severe injuries in the incident.

10. In this view of the matter, no case for bail is made out. Both Applications are accordingly rejected.

11. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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