

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

**CRIMINAL APPLICATION NO. 4870 OF 2016
WITH**

CRIMINAL APPLICATION NO. 4772 OF 2016

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CRIMINAL APPLICATION NO. 4870 OF 2016

1. Munnibai w/o. Chudaman Jodiwale .. Applicants
Age. 55 years, Occ. Household,
R/o. Jafrabad, Tal. Jafrabad,
Dist. Jalna.
2. Nitu w/o. Rameshwar Jodiwale
Age. 30 years, Occ. &
R/o. As above.
3. Shrawan s/o. Chudaman Jodiwale
Age. 22 years, Occ. Labourer,
R/o. As above.
4. Suraj s/o. Hiranman Jodiwale,
Age. 44 years, Occ. Agriculture,
R/o. As above.

Versus

The State of Maharashtra .. Respondent

Mr. Govind A. Kulkarni h/f. Mr. Rajendra Deshmukh,
Advocate for the applicants.
Mr. S.P. Sonpawale, A.P.P. for respondent/State.

WITH

CRIMINAL APPLICATION NO. 4772 OF 2016

Hirabai Ganeshlal Gorakshak .. Applicant
Age. 50 years, Occ. Household,
R/o. Lodhi Mohalla, Jalna,
Tq. & Dist. Jalna.

Versus

The State of Maharashtra .. Respondent

Mr.Mahesh R. Sonwane, Advocate for the applicant.
Mr.S.P. Sonpawale, A.P.P. for respondent/State.

CORAM : A.M. BADAR,J.

DATED : 13.10.2016

P.C. :-

1. Applicants, who are accused in Crime No.236 of 2016 registered with Sadar Bazar Police Station, Dist. Jalna, for offences punishable under sections 363, 364, 302, 143, 147, 149, 120-B of the Indian Penal Code, by these applications, are seeking their release on bail after filing of charge-sheet against them.

2. Heard learned Counsels for the applicants. They argued that there is no iota of evidence to connect the applicants with the crime in question. It is argued that applicant Shravan Jodiwale was at Jafrabad on 01.05.2016 at 4.58 p.m. and applicant Suraj was at Jafrabad at 08.05 p.m. of 01.05.2016, which can be seen from the call

details record collected by the prosecution.

3. It is further argued that the applicants are roped in the crime in question merely because there was civil dispute between the parties.

4. Learned A.P.P. opposed applications by contending that the crime in question is serious and there is evidence of CC TV footage and recovery. Learned A.P.P. further argued that apprehension was expressed by the prosecution witnesses about the applicants.

5. I have extensively heard learned Counsel appearing for the informant. She took me through reply of the informant and also to the report of non-cognizable case dated 30.09.2016. By taking me through statements of witnesses, learned Counsel for the informant opposed applications by stating that because of dispute regarding property, minor son of the informant was killed by all accused persons.

6. Perused the charge-sheet. On 01.05.2016, there was common marriage ceremony at Guru Ganesh Bhavan, Jain School at Jalna. At about 5.30 p.m. master Saksham, a three years' old son of informant - Rakhi Jodiwale went missing. She reported this fact to police that at 2.43

a.m. of 02.05.2016, which is resulted in registration of Crime No.236 of 2016 for offence punishable under section 363 of the Indian Penal Code. Soon thereafter dead body of master Saksham was found near Jivandhara Hotel, Main Chouphuli. Then supplementary statement of informant was recorded at about 9.20 a.m. of 02.05.2016. The evidence against accused persons in this serious offence of homicidal death of master Saksham is comprising of CC TV footage as well as recovery pursuant to confessional statements of co-accused Rameshwar and Pawan. Similarly, there is evidence of motive.

7. Perusal of statement of Bilal Ahmed shows that CC TV footage of CC TV installed at Jain School shows that on 01.05.2016 from 18.50 hours to 19.04 hours, master Saksham was kidnapped by co-accused Pawan Jodiwale. Confessional statement of co-accused Rameshwar shows that he had concealed his clothes as well as clothes of co-accused Mukesh at Jafrabad. Those clothes were seized. Co-accused Pawan Jodiwale by his confessional statement showed place of incident on 08.05.2016.

8. So far as the present applicants are concerned, prima facie, it appears that except mere apprehension of the informant, there is no tangible evidence to connect

the applicants, with the crime in question. Applicant Munnibai is grand-mother of the deceased whereas applicant Nitu is his aunt. Applicant Shrawan and Suraj are uncle as well as cousin uncle of deceased Saksham. Applicant Hirabai is mother of applicant Nitu Jodiwale. According to the prosecution case, in the year 2013 on birth of master Saksham, in-laws of the informant got sale deed of land standing in the name of Manoj - husband of the informant, executed in favour of applicant Shrawan Jodiwale (brother of Manoj). This has resulted in filing of Civil Suit by informant Rakhi against her in-laws and relatives. She as well as witnesses are apprehending that because of this civil dispute, master Saksham must have been killed. Opinion of witnesses of facts is of no use. Something tangible is required in order to infer complicity of applicants in the crime in question. I could not gather even indirect evidence of conspiracy from the charge-sheet nor learned A.P.P. as well as learned counsel for the informant is in a position to demonstrate the evidence to that effect in respect of the present applicants.

9. Apprehension of the informant as well as prosecution that there may be tampering of evidence is also devoid of substance because evidence is in the nature of CC TV footage as well as confessional

statements of co-accused. There is no direct evidence in order to indulge any tampering. Allegations that there may be danger to life of members of prosecuting party can be taken care by imposing necessary conditions. Therefore, the order :-

O R D E R

i) Applications are allowed.

ii) Applicants/accused - Munnibai w/o. Chudaman Jodiwale, Nitu w/o. Rameshwar Jodiwale, Shrawan s/o. Chudaman Jodiwale, Suraj s/o. Hiranman Jodiwale and Hirabai Ganeshlal Gorakshak, in Crime No.236 of 2016 registered with Sadar Bazar Police Station, Dist. Jalna, for offences punishable under sections 363, 364, 302, 143, 147, 149, 120-B of the Indian Penal Code, be released on bail on executing P.R.Bond of Rs.20,000/- [Rupees Twenty Thousand] and on furnishing surety in the like amount, by each of them.

iii) As a condition of this Order, applicants 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) Applicants shall not tamper the evidence of the prosecution.

v) Applicants to co-operate the trial Court in the expeditious disposal of trial against him.

vi) Applicants should not contact either the informant or her husband – Manoj or any other prosecution witnesses in any manner.

[A.M. BADAR, J.]