

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

26 CRIMINAL APPLICATION NO. 4845 OF 2016

**OMKAR S/O SHRIRAM SONTAKKE
& ANR.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. K.D.Jadhav, Advocate for Applicants.

Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 19th SEPTEMBER, 2016

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PER COURT :

1. The applicants/accused in Crime No. 134/2016 registered at Chikalthana police station, Dist. Aurangabad for the offences punishable u/ss 302,120(B),201 read with 34 of the Indian Penal Code, by this application are praying for releasing them on bail.

2. Heard the learned counsel for the applicants. He argued that the F.I.R. itself goes to show the absurdity in

prosecution case. He further argued that though the incident allegedly took place on 16/06/2016, the F.I.R. is lodged on 28/06/2016. The learned counsel further argued that as the investigation is virtually over, the applicants are entitled for bail.

3. The learned A.P.P. opposed the application by contending that the crime in question is serious. However, perusal of papers of investigation supplied by the learned A.P.P. makes it clear that he is not having the entire case diary/papers of investigation. Few photo copies of papers of investigation are supplied by the learned A.P.P.

4. The F.I.R. shows that the incident of death of Ramesh Misal, husband of informant Vijaya Misal took place in the intervening night of 16/06/2016 and 17/06/2016 at their residential house. According to the prosecution case, as reflected from the F.I.R., applicantsNo. 1 Omkar s/o Shriram Sontakke is husband of sister of deceased Ramesh Misal, whereas applicantsNo. 2 Ganesh s/o Rameshwar Misal is brother of deceased Ramesh Misal. applicantsNo. 1 Omkar s/o Shriram Sontakke resides adjacent to the house of informant Vijaya Misal and her deceased husband Ramesh Misal. These houses are stated to be situated at Plot No. C-9/2 of M.I.D.C., Shendra and within the premises of Keshav Estrogen Pipes Company.

5. According to the prosecution case, on 16/06/2016 there was quarrel between Ramesh Misal on one

side and accused persons on another side over the ancestral house property. Then co-accused Jaya Sontakke asked informant Vijaya to accompany her for easing. This happened at about 11.30 p.m. on 16/06/2016. Informant Vijaya then stated that after easing, co-accused Jaya took her to various places. During that journey, informant Vijaya claims to have heard loud shout of her deceased husband Ramesh Misal. Still, in the F.I.R., informant Vijaya stated that she continued roaming with co-accused Jaya in that night. Informant Vijaya states in her F.I.R. that in that night, co-accused Jaya showed her water tank, water, anthill and then took her to the go-down of the company for bringing sack of cow-dung. This all stated to have been happening though the informant heard shouts of her deceased husband. Then the informant claims to have returned to her house after about 1 ½ hours to see the dead body of her husband Ramesh Misal hanging by the ceiling of her house. The informant then claimed that the accused persons destroyed evidence of commission of that crime by concealing the ligature and by wiping of the blood. In this incident, which took place in the intervening night of 16/06/2016 and 17/06/2016, the informant/widow lodged report on 28/06/2016. This has resulted in registration of crime in question.

6. The papers supplied by the learned A.P.P. shows that on 17/06/2016 itself, police visited the spot and drew spot panchanama. Thereafter few articles were also seized from the spot of the incident by effecting seizure panchanama. This also happened on 17/06/2016. These documents *prima*

facie shows that report of accidental death case of Ramesh Misal was registered with police, which has resulted in enquiry. The papers of that accidental death case appears to have been deliberately suppressed by the Investigating Officer. Those are not with the photo copies of papers of investigation shown to this Court by the learned A.P.P.

7. Be that as it may, considering the averments in the F.I.R. as well as the fact that Ramesh Misal was found dead in his own house, further pre-trial detention of the present applicants is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant No. 1 Omkar s/o Shriram Sontakke and applicant No. 2 Ganesh s/o Rameshwar Misal in Crime No. 134/2016 registered at Chikalthana police station, Dist. Aurangabad for the offences punishable u/ss 302,120(B),201 read with 34 of the Indian Penal Code be released on bail on executing P.R. Bond of Rs. 15,000/- [Rupees Fifteen Thousand] each and on furnishing surety in the like amount.

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

[A.M.BADAR, J.]

KNP/Cr.Apln. 4815.2016