

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

Criminal Application No. 5117 of 2016

District : Jalna

1. Shrinivas s/o. Jagannath Mantri,
Age : 75 years,
Occupation : Agriculture.
2. Omprakash s/o. Shrinivas Mantri,
Age : 49 years,
Occupation : Business &
Agriculture.

Both r/o. Jalna,
Taluka & District : Jalna.

.. Applicants.

versus

The State of Maharashtra.

.. Respondent.

.....

*Mr. R.N. Dhorde, Senior Advocate, with
Mr. Satej S. Jadhav, Advocate, for applicants.*

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

.....

CORAM : A.M. BADAR, J.

DATE : 26TH SEPTEMBER 2016

ORAL ORDER:

Applicants who are accused in Crime No. 386/2016 for offences punishable under Sections 302, 324, 325, read with Section 34 of the Indian Penal

Code, registered with Sadar Bazar Police Station, Jalna, District Jalna, on the basis of statement of the deceased recorded at Karwa Hospital, Jalna, on 06.07.2016, by this application, are seeking pre-arrest bail.

2. Heard the learned Senior Counsel appearing for applicants / accused. After pointing out the dying declaration of Mahesh s/o. Shivdayal Loya recorded at Karwa Hospital, which has resulted in registration of the crime in question, the learned Senior Counsel took me through the FIR lodged by co-accused Sunil @ Rudra s/o. Rameshwar Shinde on the very same day wherein the co-accused had attributed an attempt to his life by Mahesh Loya, his son and friends of his son. The learned Senior Counsel then drew my attention to the complaint lodged by Rameshwar s/o. Bhanudas Shinde - father of co-accused Sunil @ Rudra, with the Superintendent of Police, Jalna, on 25.05.2016 reflecting his monetary transactions with Mahesh Loya (since deceased). On the basis of these two documents, the learned Senior Counsel argued that applicants are falsely implicated in the crime in question as the deceased was having enmity because of some financial transaction with Rameshwar Shinde and his sons. The learned Senior Counsel argued that co-accused Sunil @ Rudra has categorically mentioned assault on him by deceased Mahesh Loya and his sons and reason for that assault

is also categorically mentioned in the contemporaneous FIR. In submission of the learned Senior Counsel, the dying declaration in the nature of FIR, which contains only inferences of the deceased, is not sufficient to deprive applicants of their liberty.

3. The learned Senior Counsel for applicants further argued that at the time of his admission to Karwa Hospital, the deceased has given history of assault by unknown persons. The learned Senior Counsel further argued that supplementary statements of the relatives of the deceased as well as his written dying declaration allegedly made in the hospital are coming on record after death and as such veracity of these supplementary statements as well as documents are seriously in doubt.

4. Papers of medical treatment of applicant no.1 Shrinivas Mantri, who is stated to be 75 years of age, shows that he is severally ill and the learned Senior Counsel submits that even today, applicant no.1 Shrinivas Mantri is undergoing operation at Bombay Hospital, Mumbai. The learned Senior Counsel submitted that applicant no.1 Shrinivas Mantri is a bed ridden person.

5. As against this, the learned Addl. Public Prosecutor argued that during investigation it

transpired that applicant - Omprakash Mantri had made certain telephonic calls to Rameshwar Shinde - father of co-accused Sunil @ Rudra. Similarly call detail record shows that there are two calls made by applicant Omprakash Mantri to co-accused Sunil @ Rudra Shinde. The learned Addl. Public Prosecutor further argued that during his stay in hospital prior to his death on 16.07.2016, Mahesh Loya has scribed a dying declaration, ascribing role to both applicants in indulging conspiracy and assaulting him at the hands of co-accused Sunil @ Rudra Shinde. The learned Addl. Public Prosecutor further argued that supplementary statement of relatives of deceased Mahesh Loya, including those of his mother and widow goes to show that on 07.04.2016, applicant Omprakash Mantri accompanied by another had been to the house of deceased Mahesh Loya and they indulged in threatening. The learned Addl. Public Prosecutor further argued that earlier deceased Mahesh Loya was working with applicant Shrinivas Mantri and as a consideration of that work, it was decided to give a plot of land to deceased Mahesh Loya. Instead of giving that plot of land, attempt of applicants was to extort money from Mahesh Loya and this fact is coming on record from statements of eye witnesses. Therefore, according to the learned Addl. Public Prosecutor, by indulging in conspiracy applicants through co-accused had eliminated Mahesh Loya. As such according to the learned Addl. Public

Prosecutor, considering the nature of crime in question, applicants are not entitled for pre-arrest bail.

6. Perused papers of investigation including the FIR. Evidence against present applicants in this offence punishable under Section 302 of the IPC as well as under Section 120B of the IPC is mainly in the form of written dying declarations as well as oral dying declarations of deceased Mahesh Loya. Undisputedly he suffered injuries on 06.07.2016. He died while taking treatment at Karwa Hospital on 16.07.2016 and his death appears to be homicidal.

7. In his first dying declaration recorded on 06.07.2016 by Police at Karwa Hospital, Mahesh Loya reported that he was earlier working with applicant no.1 Shrinivas Mantri and as a consideration thereof, applicant no.1 Shrinivas Mantri has promised to give him a plot of 5000 square feet. Subsequently applicant no.1 Shrinivas Mantri refused to hand over that plot to him leading to a quarrel between them. The declarant further disclosed that on 05.07.2016, co-accused Sunil @ Rudra accompanied by one more person came to his shop. One more person came thereafter. Those persons held him and co-accused Sunil @ Rudra assaulted him by means of an iron rod. With this, the declarant further disclosed that this happened at the instance of applicant Omprakash

Mantri. In this first officially recorded dying declaration of deceased Mahesh Loya, no role by even inference is attributed to applicant no.1 Shrinivas Mantri.

8. According to the prosecution case, while admitted in the hospital, deceased Mahesh Loya scribed another dying declaration. In nutshell, in this second dying declaration, according to the declarant, on 05.07.2016, 4 - 5 persons came to his office. Co-accused Sunil @ Rudra Shinde was one amongst them. The declarant stated that co-accused Sunil @ Rudra Shinde had assaulted him by iron rod. In this second dying declaration, the declarant has stated that Rameshwar Shinde was always found with "*Shri Mantri*".

9. Supplementary statements of relatives of deceased Mahesh Loya shows that on 07.04.2016, applicant Omprakash Mantri accompanied by another had been to the house of the deceased and had asked the deceased to come to the bungalow of Mantri Seth.

10. These are the dying declarations so also statements of relatives of the deceased. As against this, on the very same day of lodging the FIR by Mahesh Loya, co-accused Sunil @ Rudra Shinde while admitted at Ambekar Hospital at Jalna, has also given his statement which has resulted in registration of

Crime No. 385/2016 against Mahesh Loya (since deceased) and another. It is averred by co-accused Sunil @ Rudra Shinde in his FIR, that his father Rameshwar had given hand loan of Rs. 2,00,000/- to Mahesh Loya (since deceased) and he had been to Mahesh Loya for getting back some amount for medical treatment of his father Rameshwar. At that time, according to this FIR, Mahesh Loya, his son Krishna and friends of Krishna assaulted him by means of a sword and fractured his left leg. Then applicants have also produced on record an application dated 25.05.2016 made by Rameshwar Shinde wherein it is alleged by Rameshwar Shinde - father of co-accused Sunil @ Rudra, that out of funds collected by him for purchasing a car, at the request of Mahesh Loya (since deceased), he paid an amount of Rs. 2,00,000/- to said Mahesh Loya but despite repeated efforts, Mahesh Loya is not refunding that amount to him. Documents annexed to this application placed on record by applicants do show that Rameshwar Shinde had withdrawn the amount from time to time from the Society and G.P.F., making that much amount available with him.

11. With this, prima facie it appears that co-accused Sunil @ Rudra Shinde and his father Rameshwar were having grievance against Mahesh Loya as they were of the opinion that their amount of Rs. 2,00,000/- is misappropriated by Mahesh Loya (since

deceased). The FIR lodged by co-accused Sunil @ Rudra Shinde, which is a contemporaneous document, reflect the cause of the incident for his visit to the deceased for demanding back some amount for medical treatment of his father Rameshwar and subsequent assault on him by the deceased and his associates.

12. Prima facie it appears that cause with co-accused Sunil @ Rudra Shinde was totally different. He was concerned with recovery of the amount of hand loan taken by the deceased from his father and need of money for medical treatment of his father Rameshwar. On this backdrop, incident of assault seems to have occurred. Deceased Mahesh Loya might be having some other transactions with applicants and applicants might not have fulfilled their promise of delivering a plot of land to him. Dying declarations of Mahesh Loya, so far as present applicants are concerned, are merely on the basis of his apprehension because breach of promise to deliver a plot of land by applicants to him. However, record of investigation and contemporaneous documents shows that grievance of co-accused Sunil @ Rudra Shinde was totally different. Papers of investigation prima facie does not disclose any evidence regarding conspiracy. Even if it is alleged that there were phone calls between applicant Omprakash Mantri and Rameshwar Shinde, the learned Addl. Public Prosecutor submits that Rameshwar Shinde is not impleaded as an

accused in this crime. Normally, a dying declaration is stated to be containing the truth but the same is never made on oath neither the declarant can be subjected to cross examination. Therefore, for ascertaining its truthfulness, the Court is bound to apply strict test and closest circumspection to such statements before acting upon them. In the case in hand, papers produced on record are reflecting some another story and some another reason for assaulting the deceased by co-accused Sunil @ Rudra Shinde. In this backdrop, history given by the deceased himself while getting himself admitted at Karwa Hospital to the effect that he was assaulted by some unknown person assumes importance.

13. On this backdrop, considering the nature of evidence which is primarily on the basis of inferences of the deceased, custodial interrogation of applicants in this crime is not warranted.

14. Hence, I pass the following order :-

(a) The Application is allowed.

(b) Applicants / accused, in the event of arrest in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 30,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) As a condition of this order, applicant no.2 Omprakash Mantri shall attend the concerned Police Station as and when reasonably called by the Investigation Officer for the purpose of investigation in the crime in question. He shall cooperate the Investigation Officer in investigation of the crime in question.

(d) The Investigation Officer, if he so desires, can approach applicant no.1 Shrinivas Mantri for the purpose of investigation as and when deemed necessary. If with passage of time, before filing of charge-sheet, if any, applicant no.1 Shrinivas Mantri recovers from his illness, then he shall report the Police Station as and when reasonably found necessary by the Investigation Officer for the purpose of investigation.

(e) As conditions of this order, both applicants shall abide by following directions :-

(i) 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.

(ii) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing charge-sheet, if any, in future against them.

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

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

(A.M. BADAR)
JUDGE

.....