

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

CRIMINAL APPLICATION NO. 5417 OF 2016

1. Raju s/o. Vishwanath Parshette .. Applicants
Age. 40 years, Occ. Agri.,
2. Satish Vishwanath Zerikunthe
Age. 38 years, Occ. Agri.,
3. Pintu @ Krishnaji Ratnaji Choudhari
@ Telange, Age. 38 years, Occ. Agri.,
4. Virkumarappa Mahalingappa Swami
Age. 42 years, Occ. Agri.,

All R/o. Bolegaon, Tq. Deoni,
Dist. Latur.

Versus

The State of Maharashtra .. Respondent

Mr.P.G. Rodge, Advocate for the applicants.
Mr.S.P. Sonpawale, APP for respondent/State.

**CORAM : A.M. BADAR,J.
DATED : 06.10.2016**

P.C. :-

1. Four applicants, who are accused in Crime No.173 of 2016, for the offence punishable under section 302 r/w 34 of the Indian Penal Code and under section 3(2)(v) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by this application are seeking pre-arrest bail.

2. Heard learned Counsel appearing for applicants/accused. By pointing out F.I.R. lodged by Balikabai-widow, learned Counsel argued that on the basis of inferences of Balikabai, crime in question is registered. Learned Counsel argued that Kalappa (since deceased) went missing from 02.09.2016, but no missing report was filed. There is false implication at the instance of police patil of the village.

3. Learned A.P.P. opposed the application by contending that deceased Kalappa was lastly seen in the company of accused persons as reported by his wife Balikabai Shinde on 04.09.2016. Learned A.P.P. further pointed out statements of Prakash Gote, Babu Dhotre, Yamunabai Dhotre, Anusayabai Andhare, Laxmibai Dhotre etc. and submitted that Kalappa Shinde (since deceased) was in the company of accused persons and then his dead body was found. Therefore, by invoking last seen theory, applicants are, prima facie, liable for his murder. Learned A.P.P. pointed out that post-mortem report shows death prior to more than 36 hours of autopsy to support this contention.

4. Perused the investigation papers. The F.I.R. is lodged on 04.09.2016. Widow-Balikabai has stated that her husband Kalappa Shinde (since deceased) had borrowed Rs.10,000/- from applicant - Raju Parshette. He was regularly threatening and abusing Kalappa over the issue of refund of that amount. The informant further reported that at 9.00 a.m. of 02.09.2016, all applicants came to her house and they had taken Kalappa Shinde with them on the motor-cycle. According to the informant, then dead body of her husband was found in a well in the field of Kisan Pawar on 04.09.2016. She, therefore, suspected applicants with motive of refund of hand loan.

5. To invoke last seen theory, the time gap between accused and deceased seen together alive and when the deceased is found dead needs to be so short that possibility of other person than accused being author of crime becomes impossible. With this, if statements of Babu Dhotre, Yamunabai Dhotre, Anusayabai Andhare and Laxmibai Dhotre are perused, then it is seen that at about 11.00 a.m. of 02.09.2016 Kalappa Shinde (since deceased) was found in the company of applicants in the field of applicant - Raju Parshette. They were eating legumes given by Babu Dhotre at that time. Statement of Prakash Gote shows that he saw Kalappa Shinde and

applicant Pintu Telang at about 1 1/2 - 2 p.m. of 02.09.2016. They were dead drunk and Pintu Telang was unable to drive motor cycle. Therefore, Pintu parked motor-cycle by the side of the road and he as well as Kalappa Shinde proceeded towards the field by walking.

6. It is thus seen that at about 1 1/2 to 2 p.m. on 02.09.2016 Prakash Gote had seen deceased Kalappa Shinde live in the company of Pintu Telang. Statement of Babu Dhotre and others shows that when they had been to the house of applicant - Raju Parshette, he was sitting with his wife and nobody else was with him.

7. With this evidence, it can be said that deceased Kalappa Shinde was not in the company of applicant No.1 - Raju Parshetti, applicant No.2 - Satish Vishwanath Zarikunthe and applicant No.4 - Virkumarappa Mahalingappa Swami, when he was lastly seen alive. Therefore, considering nature of evidence against these three applicants, their custodial interrogation is not warranted. However, as the deceased was lastly seen in the company of applicant No.3 - Pintu @ Krishnaji Ratnaji Choudhari @ Telenge and as the offence is punishable under section 302 of the Indian Penal Code, applicant No.3 is not entitled for pre-arrest bail. Therefore, the following order :-

O R D E R

i. The application is partly allowed.

ii. In the event of their arrest in Crime No.173 of 2016, registered at Deoni Police Station, Dist. Latur, for the offences punishable under sections 302 read with 34 of the Indian Penal Code and section 3 (2) (v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, applicant No.1 – Raju s/o. Vishwanath Parshette, applicant No.2 – Satish Vishwanath Zarikunthe, applicant No.4 – Virkumarappa Mahalingappa Swami be released on bail on executing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand) and on furnishing surety in like amount, by each of them.

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 to the Court.

iv. The applicants shall not tamper the evidence of the prosecution.

v. The applicants shall attend concerned police station on every alternate Sunday in between 11.00 a.m. to 01.00 p.m. till filing of charge-sheet. They should co-operate the investigation.

vi. The application of applicant No. 3 – Pintu @ Krishnaji Ratnaji Choudhari @ Telange is rejected.

[A.M. BADAR, J.]