

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

CRIMINAL APPLICATION NO. 5461 OF 2016

1. Bhagwan s/o. Changuram @ Changuji Raut.. Applicants
Age. 65 years, Occ. Labour,
R/o. Ghalatwadi, Tq. Majalgaon,
Dist. Beed.
2. Santosh s/o. Bhagwan Raut
Age. 27 years, Occ. Labour,
R/o. Ghalatwadi, Tq. Majalgaon,
Dist. Beed.

Versus

The State of Maharashtra .. Respondent

Mr.S.J. Salunke, Advocate for the applicants.
Mr.S.J. Salgare, APP for respondent/State.

**CORAM : A.M. BADAR,J.
DATED : 10.10.2016**

P.C. :-

1. The applicants - father and accused duo are accused in Crime No.123 of 2016, registered with Majalgaon Rural Police Station for offence punishable under section 302 read with section 34 of the Indian Penal Code. By this application, they are seeking their release on bail after filing of charge-sheet.

2. Heard learned Counsel appearing for applicants/accused. By taking me through statements of eye witnesses and the report of post-mortem examination of deceased Vaijinath Ambure, the learned Counsel argued that it cannot be said that accused persons had intended to kill their own near relative by assaulting him by sticks. Learned Counsel argued that it can be said that the incident happened in spur of moment because of the insistence of the deceased to marry Seema and conduct of applicants is incompatible to their guilt. They themselves as per prosecution case had admitted deceased to the hospital.

3. Learned A.P.P. opposed the application by contending that eye witnesses are categorically stating that deceased was assaulted by both applicants by means of sticks. There is recovery of articles. There was motive with applicants to eliminate Vaijinath Ambure. Learned A.P.P. further argued that there is evidence of extra-judicial confession by applicants to prosecution witnesses.

4. I have considered the rival submissions and also perused the charge-sheet. Deceased Vaijinath Ambure is nephew of applicant-Bhagwan Raut. Applicant-Santosh is his cousin. According to the prosecution case, deceased

Vaijinath is married person having three children. Seema is his cousin sister. She is daughter of applicant No.1-Bhagwan and sister of applicant No.2-Santosh. According to the prosecution case, deceased Vaijinath eloped with Seema for few days and had returned. He started insisting his maternal uncle i.e. applicant No.1-Bhagwan and his cousin i.e. applicant No.2-Santosh to marry Seema. Eye witnesses account of the incident coming from mouth of Vachistha Ashruba Bhosle, Bapurao Khandagale and Kishor Nagane is reflecting this incident. They have also stated that they saw both applicants assaulting Vaijinath by sticks. Statements of these three witnesses further show that this Vaijnath slept in the house of the applicants, who are his maternal uncle and cousin. Thereafter, he was taken to the Government Hospital at Majalgaon, where he succumbed to injuries.

5. The post-mortem report shows that injuries on dead-body of Vaijnath were in the nature of abrasion, contusions, CLW, etc. and the death was because of cardio respiratory arrest due to hemorrhagic shock due to injuries to internal organs.

6. Considering the events which preceded the actual incident of assault, prima facie it cannot be said that the present applicants were having requisite knowledge as

well as intention to eliminate their near relative, namely, Vaijinath Ambure. The incident took place obviously because a married person was eloped with his cousin sister and then insisted his maternal uncle and cousin to allow him to marry his cousin sister - Seema. This has resulted in beating by father and brother of Seema to deceased Vaijinath. Weapons allegedly used were sticks. Applicants, themselves had admitted Vaijinath to the hospital and informed this fact to their another relatives. Therefore, as prima facie there is no evidence of commission of offence punishable under section 302 of the Indian Penal Code, further pre-trial detention of applicants is not warranted and as such following order :-

O R D E R

- i) The application is allowed.
- ii) Applicants/accused- Bhagwan s/o. Changuram @ Changuji Raut and Santosh s/o. Bhagwan Raut, in Crime No. 123 of 2016, registered with Majalgaon Rural Police Station, Dist. Beed, for the offence punishable u/s 302 read with section 34 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 them.

[A.M. BADAR, J.]