

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5673 OF 2016

1] Shaikh Wahid Shaikh Kadar,
Age : 38 years, Occu.: Business,

2] Shaikh Mujib Shaikh Kadar,
Age : 28 years, Occu.: Business

Both R/o Shantinathnagar,
Behind Hero Honda Showroom,
Aurangabad Road, Jalna,
Tq. & Dist. Jalna

[At present, applicants are in
Magisterial Custody in District
Prison, Jalna]

.. Applicants

Vs.

The State of Maharashtra,
Through Police Station Taluka Jalna,
Dist. Jalna

.. Respondent

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

CORAM : A.S. CHANDURKAR, J.
DATE : 15/11/2016

ORAL ORDER :

Heard.

2. By this application filed under section 439 of the Code of Criminal Procedure, 1973, the applicants seek their release on bail, who have been arrested on 17/9/2016 with regard to crime no. 399 of 2016

registered with Jalna Taluka Police Station, Dist. Jalna under section 306 r/w. 34 of the Indian Penal Code.

3. One Prabhakar Pathade, working as Police Sub Inspector with Jalna Police Station, was investigating offence registered vide crime no. 326 of 2016 that was lodged by applicant no.1 herein. The aforesaid offence i.e. crime no. 326 of 2016 came to be registered under the provisions of section 406 and 407 of the Indian Penal Code against one Jogasingh Gumane. After this offence was registered, investigation was taken up. According to the applicants, said Prabhakar Pathade and three other Police Officials did not discharge their duties with due diligence and did not investigate the aforesaid offence in a proper manner. Hence, on 8/8/2016, a complaint was made to the Superintendent of Police, Jalna in that regard. Similarly, an application under section 156(3) of the Code of Criminal Procedure was moved by the applicants herein on 3/9/2016 against said Shri Prabhakar Pathade and three others. On 17/9/2016, said Prabhakar Pathade committed suicide.

4. It is submitted on behalf of the applicants that the statements in the diary, on the basis of which the offence in question has been registered, does not

attribute any role whatsoever to the applicants except for allegation made against applicant no.2. It is submitted that the applicants were merely prosecuting their legal remedies, as according to them, the investigation by the Police authorities was not satisfactory. It is further submitted that complaints were made against four Police Officials which included the said Prabhakar Pathade. Moreover, applicants having moved application under section 156(3) of the Code of Criminal Procedure, it cannot be said that offence under section 306 of the Indian Penal Code was made out.

5. The application is opposed by the learned Additional Public Prosecutor on the ground that the extract of the diary maintained by the deceased indicates the name of the applicant no.2. It is submitted that other material collected by the prosecution indicates various reports submitted by the applicants, which resulted in casting aspersions on said Prabhakar Pathade, resulting in his committing suicide.

6. Perused the police papers produced by the learned Additional Public Prosecutor. The incriminating material in the form of diary maintained by the deceased has been seized and has been sent to the experts for

their opinion. Reference in the said extract is to the applicant no.2 and it mentions that he has levelled a false allegation against the said Prabhakar Pathade.

7. The facts indicate that the applicant no.1 was pursuing his earlier report being Crime No. 326 of 2016 and had in that context, found that the investigation was not being properly conducted, had made complaints to the superior authorities. Filing of proceedings under section 156(3) of the Code of Criminal Procedure by the applicants against the four Police officials indicates the stand of the applicants. The entire material having been now seized, I do not find that further custody of the applicants is warranted. Hence, I am inclined to grant bail to the applicants. In view of aforesaid, the Application deserves to be allowed.

8(a) . The applicants are directed to be released on bail on furnishing P.R. bond of Rs.20,000/- (Rs. Twenty Thousand) with one surety in the like amount by each of them.

(b). The applicants shall attend the Jalna Taluka Police Station, Dist. Jalna, as per the directions of the Investigating Officer.

(c). The applicants shall not take any steps to tamper with the material collected by the prosecution.

(d). It is clarified that the observations made in this order are only for the purposes of considering the present application.

9. The Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/