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

CRIMINAL APPLICATION NO. 3492 OF 2016

Kishor @ Pinu Kundlik Bahir,
Age: 35 years, Occu: Labour,
R/o. Katewadi, At present Arolewashti,
Tq. Jamkhed,
Dist. Ahmednagar

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr P. P. More, Advocate holding for Mr A. B. Hawale, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent;
Mr R. P. Phatke, Advocate to assist Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO. 5816 OF 2016

Dattatraya s/o Ajinath Bahir,
Age: 30 years, Occu: Agril,
R/o. Katewadi, Tq. Jamkhed,
Dist. Ahmednagar

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr N. C. Garud, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent;
Mr R. P. Phatke, Advocate to assist Addl. Public Prosecutor

CORAM : A.S. CHANDURKAR, J.

DATE : 22nd November, 2016

ORAL ORDER :

Since both the applicants seek their release on bail under Section 439 of the Code of Criminal Procedure as they have been arrested in

(2)

connection with C.R. No.76 of 2014, registered at Jamkhed police station, for offences punishable under Sections 302, 143, 147, 148, 149, 452, 325, 324, 323, 504 and 506 of the Indian Penal Code and Sections 3/25 and 4/25 of the Arms Act, the applications are being decided by this common order.

2. As per the first information report lodged by one Bapusaheb Bahir, it has been stated that there was a dispute between his family and the family of Mahadeo Bahir with regard to an agricultural field. The Civil Court had held in favour of the family of the informant and hence, the other group used to threaten the family of the informant. On 12th May, 2014, at about 6.00 a.m., various persons including present applicants had gathered before the house. On hearing their commotion, the informant and his family members including father – Asaram came out. The mob was armed with sticks, axes and rods. The informant's father was assaulted, after which his brother Nitin was also assaulted. The informant's mother Gayabai attempted to rescue Nitin, but she was also assaulted. All the injured were taken for medical aid, but Asaram and Nitin succumbed to their injuries. On that basis, report came to be lodged on the same day. Applicant Dattatraya has been arrested on 14th May, 2014, while applicant Kishore has been arrested on 10th May, 2015.

3. On behalf of the applicants, it is submitted by the learned Counsel that no specific overt act has been attributed to the present applicants. There has been no recovery of any weapon of assault from them. The

(3)

recoveries were from the other accused. It was further submitted that one of the co-accused had been released on bail in Criminal Application No.5709 of 2015 and hence on parity, the present applicants were also entitled for their release. It was then submitted that by order dated 10th April, 2015, passed in Criminal Application No.1029 of 2015, this Court had directed the Sessions Court to complete the trial within a period of one year by conducting it on day to day basis. However, till today, the trial has not been completed. The learned Counsel placed reliance on the judgment of the Honourable Supreme Court in **State of Kerala vs. Raneef, 2011 (1) SCC 784**.

4. The application is opposed by the learned Addl. Public Prosecutor as well as the learned Counsel representing the informant. It was submitted that two persons had died in the assault by the mob of which the applicants were members. Considering the nature of injuries suffered by both, the deceased as well as injured witness Gayabai, it was submitted that the present applications do not deserve to be allowed. Reference was made to orders passed in Criminal Application No.6890 of 2015 as well as 6377 of 2015, to submit that such relief has been refused to other four accused. It was then submitted that the trial had already commenced and the prosecution had examined nine witnesses. The learned Counsel for the informant also referred to the deposition of some of the witnesses before the Sessions Court to submit that there was evidence against all the accused. There is also possibility of threats by the present applicants, in case they are enlarged on bail. On these counts it was submitted that

(4)

both the applications deserve to be rejected.

5. Perused the first information report as well as the charge-sheet. The statements of Gayabai, the injured witness as well as Kalyan, her son, have been recorded. In these statements no specific overt act has been attributed to the present applicants. Similarly, no recovery has been effected from these applicants. The recoveries are effected from accused nos.1, 3, 4, 5, 6 and others. In this context, the observations made while granting bail to one of the accused in Criminal Application No.5709 of 2015 can be taken into consideration. Similarly, the directions issued by this Court in Criminal Application No.1029 of 2015 for completing the trial within a period of one year is another aspect that cannot be ignored. Though these directions were issued in April, 2015, till date the trial has not concluded. Though it is true that deposition of some of the prosecution witnesses has been recorded, accused nos.29 to 32 are shown to be absconding. The observations of the Honourable Supreme Court in State of Kerala (supra), to the effect that delay in trial is one of the important factors to be taken for consideration while granting bail, support the applicants.

6. Though it was submitted by the learned Addl. Public Prosecutor and the learned Counsel for the informant that this Court in Criminal Application No.6890 of 2015 had refused to grant bail to the applicants therein, considering the fact that said order was passed on 19th January, 2016, which is almost ten months earlier, said order in the present facts cannot

(5)

be made applicable to the case of the present applicants. Thus, considering absence of any overt act on the part of the applicants, absence of any recovery from them and trial not being completed, despite order dated 10th April, 2015 in Criminal Application No.1029 of 2015, the present applicants would be entitled for their release on bail.

Both the applications are allowed.

(i) The applicants are directed to be released on bail, in connection with C.R. No.76 of 2014, registered at Jamkhed police station, for offences punishable under Sections 302, 143, 147, 148, 149, 452, 325, 324, 323, 504 and 506 of the Indian Penal Code and Sections 3/25 and 4/.25 of the Arms Act, on furnishing P.R. Bond of Rs.15,000/- each with one surety in like amount.

(ii) The applicants shall not enter the limits of Taluka Jamkhed during pendency of the trial. They shall, however, co-operate with the Sessions Court for early disposal of the trial.

(iii) They shall not take any steps whatsoever to coerce the prosecution witnesses.

(A.S. CHANDURKAR, J.)

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