

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

Criminal Application No. 5829 of 2016

District : Osmanabad

1. Milind s/o. Suresh Gove,
Age : 25 years,
Occupation : Agriculture.

2. Babasaheb s/o. Suresh Gove,
Age : 23 years,
Occupation : Education.

Both R/o. Andur,
Taluka : Tuljapur,
District : Osmanabad.

.. Applicants.

versus

The State of Maharashtra,
Through Naldurga Police Station,
Taluka : Tuljapur,
District : Osmanabad.

.. Respondent.

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Mr. P.P. More, Advocate, for applicants.

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

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CORAM : A.M. BADAR, J.

DATE : 20TH OCTOBER 2016

ORAL ORDER:

The learned Counsel appearing for applicants
/ accused, on instructions, submits that the

applicant of applicant no.1 Milind s/o. Suresh Gove is not being pressed. As such application qua applicant no.1 Milind s/o. Suresh Gove is disposed of as withdrawn.

2. Applicant no.2 Babasaheb s/o. Suresh Gove, by this application, is seeking his release on bail in Crime No. 94/2016 registered with Naldurg Police Station, District Osmanabad, for offences punishable under Sections 302, 307, 504, 506, read with Section 34 of the Indian Penal Code, after filing of the charge-sheet.

3. Heard the learned Counsel appearing for the applicant / accused as well as the learned Addl. Public Prosecutor appearing for the respondent / State.

4. The learned Addl. Public Prosecutor opposed the application by contending that evidence of motive is overwhelming and even statements of witnesses, such as Mahipati Surwase are stating that applicant Babasaheb Gove had participated in the quarrel with the members of the prosecuting party. The learned Addl. Public Prosecutor further submitted that the FIR as well as dying declarations of deceased Balu @ Balappa s/o. Mahipati Surwase shows that the present applicant along with co-accused incinerated him causing his death.

5. I have carefully considered the rival submissions and perused the charge-sheet. Balu @ Balappa Surwase sustained burns on 04.05.2016 and he died because of Septicemia caused by burn injuries on 18.05.2016 while taking treatment at Civil Hospital, Solapur.

6. The prosecution case, as reflected from the charge-sheet, is to the effect that family of Balu @ Balappa Surwase was owing some amount from co-accused Milind Gove. Therefore, Mahipati had sent his sons for fetching that amount from Milind Gove on 04.05.2016. He refused and subsequently even abused Mahipati and drove him out. In the evening, according to the prosecution case, co-accused Milind Gove, applicant Babasaheb Gove and other persons came near house of Mahipati Surwase and gave abuses to inmates of the house and questioned his wife about whereabouts of Mahipati Surwase. In night hours, when Balu @ Balappa Surwase was sleeping outside the house located in the farm, while his mother and other brothers were sleeping beside, co-accused Milind Gove and applicant Babasaheb Gove came there, poured kerosene on person of Balu @ Balappa Surwase and set him ablaze causing burn injuries and his resultant death.

7. After sustaining burns, Balu @ Balappa was

taken to Civil Hospital, Solapur, where his first dying declaration came to be recorded at about 02.30 a.m. of 05.05.2016. The same is a detailed dying declaration wherein Balu @ Balappa has narrated pre-event as well as post-event happenings apart from what took place at the time of the incident in question. In this dying declaration, Balu @ Balappa stated that when he was sleeping on the cot, co-accused Milind Gove came and set him ablaze. In this detailed dying declaration, Balu @ Balappa is not attributing any role to applicant Babasaheb Gove.

8. For the first time in next dying declaration of Balu @ Balappa, role of the present applicant is disclosed by stating that co-accused Milind Gove and the present applicant had set him ablaze and ran away. Balu @ Balappa was a teen aged boy and as such susceptible to tutoring.

9. Anita w/o. Mahipati Surwase - mother of the deceased lodged FIR of the crime in question on 06/07.05.2016 wherein she has stated that co-accused Milind Gove and applicant Babasaheb Gove incinerated her son Balu @ Balappa. In the FIR, pre-event happenings are disclosed wherein name of the present applicant is not figuring. Informant Anita Surwase had not disclosed that the present applicant was accompanying co-accused Milind Gove when Milind Gove along with other persons came to their house in the

evening on the day of the incident and abused her husband and threatened to set their house on fire.

10. Considering this nature of evidence against the present applicant and particularly the first version of the incident wherein presence of the applicant on the scene of occurrence is not mentioned by the declarant, leave apart attributing any overt act to him, I am of the opinion that further pre-trial detention of the present applicant is not warranted.

11. Hence, I pass the following order :-

(a) As aforesaid, the Application to the extent of applicant no.1 Milind s/o. Suresh Gove, stands disposed of as withdrawn.

(b) The Application to the extent of applicant no.2 Babasaheb s/o. Suresh Gove is allowed.

(b-1) Applicant no.2 Babasaheb s/o. Suresh Gove is directed to be released on bail on his executing P.R. Bond in the sum of Rs. 25,000/- and on furnishing one or more solvent sureties of the like amount.

(b-2) As conditions of this order, applicant no.2 Babasaheb s/o. Suresh Gove shall abide by the following directives :-

(i) Applicant no.2 Babasaheb Gove 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) Applicant no.2 Babasaheb Gove shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) Applicant no.2 Babasaheb Gove shall not repeat commission of similar type of offences in future.

(c) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

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