

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

CRIMINAL APPLICATION NO.6393 OF 2015

1. Shivaji @ Manohar s/o Shankar Bhalkar,
Age: 51 years, Occ: Agri.,
R/o. Overgaon,
Tq. & Dist. Aurangabad.
2. Shrinath s/o Shankar Bhalkar,
Age: 47 years, Occ: Agri.,
R/o. As above. ..Applicants

versus

The State of Maharashtra ...Respondent

WITH

**CRIMINAL APPLICATION NO. 37 OF 2016
IN
CRIMINAL APPLICATION NO.6393 OF 2015**

Smt. Aruna w/o Vishwas Shinde,
Age: 55 years, Occ: Household,
R/o. Aurangabad. ..Applicant

versus

The State of Maharashtra & ors ...Respondents

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Mr. S.G. Ladda, Advocate for applicants in Criminal Application
No. 6393 of 2015 and for respondent Nos. 2 and 3 in Criminal
Application No. 37 of 2016
Mr. S.J. Salgare, A.P.P. for respondent/State
Ms. Sonia S. Chillarge, Advocate to assist A.P.P.

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CORAM : N.W. SAMBRE, J.

DATE : 20th JANUARY, 2016

ORAL ORDER :

For the reasons stated in the application, Criminal

Application No. 37 of 2016 stands allowed.

2. Heard Mr. Ladda, learned Counsel for the applicants, and learned A.P.P., who is assisted by Ms. Sonia S. Chillarge, learned Counsel for the complainant.

3. The applicants are seeking regular bail in Crime No. I-21 of 2015 registered with Harsul Police Station, District Aurangabad for the offence punishable under Sections 302, 143, 147, 148, 149 of Indian Penal Code.

4. The prosecution story against the present applicants is that Aruna, wife of deceased Vishwas lodged F.I.R. on 14/03/2015 alleging that she has received call on land line from mobile of her husband at 11-00 a.m., wherein he has named present applicants as one of the accused, who have assaulted him with stick and caused fracture and grievous injury, resulting into registration of crime.

5. After the applicants were arrested, the investigation was set into motion. So far as applicant No. 1 is concerned, stick, whereas applicant No. 2 is concerned, axe is recovered after drawing memorandum under Section 27 of the Evidence Act.

6. While trying to make out a case for grant of bail, Mr. Ladda, learned Counsel for the applicants would urge that omnibus allegations are made against the applicants about participation. He would submit that main role is attributed to Sanjay and his wife Anita in the crime in question. He would then urge that initially it is not the story of prosecution that weapon like axe was used in the commission of crime and has invited attention of this Court to the statement of eye witness to the incident Shivpal. He would then urge that the investigation is already complete and further detention of the applicants is not necessary. Apart from above, according to him, the applicants are entitled to be released on bail on the ground of parity, in view of order dated 09/10/2015 passed in Criminal Application No. 5154 of 2015 in favour of Sahebrao. Parity is claimed in the matter.

7. The application is opposed by learned A.P.P. by inviting my attention to the statement of eye witnesses. He would then submit that cause of death, as is apparent from post mortem report, is because of grievous injuries suffered. According to him, upon perusal of the entire investigation papers, it is hard to believe that only two persons i.e. Sanjay and Anita have committed crime in question. He would then urge that in view of strong *prima facie* evidence against the applicants, the application needs to be rejected

as the applicants cannot be claimed the ground of parity as that of Sahebrao.

8. Ms. Sonia Chillarge, learned Counsel, who assisted learned A.P.P. in the matter, while opposing the application for grant of bail, has tried to distinguish the case of Sahebrao with that of present applicants on the ground that nothing was recovered under Section 27 of the Evidence Act from the custody of Sahebrao. Apart from above, learned Counsel has placed reliance upon the statements of Walmik and Vidya so as to demonstrate extra-judicial confession. Learned Counsel would then urge that in view of recovery under Section 27 of the Evidence Act from both the applicants, the ground of parity is not available and there are eye witnesses to the incident in question.

9. With the assistance of learned A.P.P. I have perused the chargesheet and the statements of the eye witnesses and other witnesses namely, Walmik, Vidya, Shivpal, Pundalik and Mangalchand.

10. The fact remains that nothing was recovered from Sahebrao under Section 27 of the Indian Evidence Act, however, what is recovered from applicant No. 1 and 2 are stick and axe.

There are two eye witnesses who have named Sahebrao. The story of use of axe in the crime in question was introduced subsequently by way of supplementary statement. Apart from above, the fact as regards the allegations in F.I.R. points out finger of *prima facie* involvement against Sanjay. If the narrations in the F.I.R. are compared with that of statements of Walmik and Vidya, it could be easily inferred that there is material noticeable contradiction in the narrations. Learned Counsel for complainant was right in pointing out that such contradictions can be gone into at the time of trial, however, whether principle of parity can be applicable to the facts of the case, is an issue which is required to be considered. In my opinion, having regard to the fact that investigation in the matter is already complete and chargesheet is filed, the investigation against the present applicants depicts omnibus statement against the applicants of use of stick. The axe that was recovered from applicant No. 2 is not stained with blood.

11. In this background, in my opinion, the case of the applicant could be treated at par to that of Sahebrao. In view of above application stands allowed.

Applicants be released on bail, in connection with Crime No. I-21/2015 registered with Harsul Police Station, Dist. Aurangabad

for the offence punishable under Sections 302, 143, 147, 148, 149 of Indian Penal Code, upon executing P. R. Bond of Rs. 20,000/- with one surety in the like amount, by each of them. Applicants shall not attempt to influence the prosecution witnesses in any manner. They shall not enter the territorial limits of village Overgaon, Tq. and Dist Aurangabad till the trial is concluded without prior permission of the concerned Sessions Court.

12. Criminal Application No. 6393 of 2015 stands allowed in above terms.

[N.W. SAMBRE, J.]