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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1165 OF 2016

Chetan Tukaram Harpale and ors	 Applicants
V/s.	
The State of Maharashtra	 Respondent

ANTICIPATORY BAIL APPLICATION NO.1004 OF 2016

Mayur Suresh Kadam	 Applicant
V/s.	
The State of Maharashtra	 Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1005 OF 2016

Sangam Suresh Kadam and ors	 Applicants
V/s.	
The State of Maharashtra	 Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.1006 OF 2016

Yuvraj Vilas Kalbhor	 Applicant
V/s.	
The State of Maharashtra	 Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1024 OF 2016

Kamlakar Rambhau Supekar and ors	 Applicants
V/s.	
The State of Maharashtra	 Respondent

ALONGWITH

ANTICIPATORY BAIL APPLICATION NO.1025 OF 2016

Ratnakar Rambhau Supekar and ors

.... Applicants

V/s.

The State of Maharashtra

.... Respondent

Mr. A. P. Mundargi, Senior Advocate I/by Prashant M. Patil, for applicant in Application No.1165 of 2016.

Mr. A.P. Mundargi, Senior Advocate i/by Ganesh Gole, a/w Mr. Shailesh Maske, for applicants in Application Nos.1004/16, 1005/2016, 1006/2016.

Mr. Shirish Gupte, Senior Advocate i/by Prashant P. More, for applicants in Application Nos.1024 of 2016 and 1025 of 2016,.

Mr. Sanjay Bhojwani, for the intervener.

Mr. S.S. Pednekar, APP for respondent State in all applications.

CORAM : A. M. BADAR, J.

DATE : 27th JUNE, 2016.

P.C. :

1. Since all above applications are arising out of one and the same crime, they are decided by this common order.

2. Applicants/accused Chetan Harpale and Deepak Khatate in Criminal Bail Application No.1165 of 2016 are claiming bail; whereas rest of applicants in other applications, are praying for pre-arrest bail, in Crime No.346 of 2016, registered with Loni Kalbhor Police station on 6.5.2016, for offence punishable under Section 306 read with 34 of the Indian Penal

Code, at the instance of Vikas Balasaheb Khatate.

2. According to prosecution case, Balasahab Khatate consumed insecticide in his field on 23.04.2016, and died suicidal death while taking treatment at Sassoon Hospital on 4.5.2016.

3. The F.I.R. came to be lodged against applicants on 6.5.2016.

4. Heard learned Senior Counsels, appearing for applicants. They unanimously submitted that civil dispute was pending between the parties including the deceased in which decree came to be passed in favour of Supekar family. That decree was confirmed in Appeal and during execution proceedings, possession of the disputed land was delivered to the Decree Holder by the Court. Learned Senior Counsels further argued that no capital can be made out of the fact that gat Number is incorrectly written as 194. When in fact gat number of which possession was taken is 195.

5. My attention is drawn to the certificate issued by Kamgar Talathi, mentioning that there are no sub divisions of gat No.194. It is further argued that as such suicide by deceased Balasaheb cannot be said to be a natural act of normal human being. It is further argued that so far as applicant Kamalakar and Ratnakar in Application No.1024 of 2016 and 1025 of 2016, are concerned they are not even owners of disputed gat No.195/2. In family partition land from this gat Number went to other

branch of Supekar family.

6. As against this the learned APP pointed out that suicide note was found on the person of deceased, which was seized while drawing panchnama dated 25.4.2016. According to the learned APP, that note prima facie reveals that applicants/accused had abetted commission of suicide by the deceased as deceased Balasaheb is seen to have been instigated by applicants to indulge in commission of suicide by constantly harassing him. The learned APP pointed out the statements of wife of deceased as well as Chandrakant Kamble, employee of Supekar family to demonstrate abetment.

7. I also heard learned counsel appearing for the informant. It is argued that possession of 17 R land from gat No.195/2 was never taken but rather under the guise of executing decree, possession of some other land of deceased was taken by applicant/accused persons. About 100 persons barged inside the field of the deceased and erected some cement poles for taking forcible possession of agricultural land which has resulted in ending life by Balasaheb. Therefore, in the submission of learned counsel for informant, applicants are not entitled for any relief.

8. The perusal of papers of investigation as well as documents placed on record and the contents of the note allegedly written by the deceased. F.I.R. lodged by Vikas Khatate – son of the deceased shows

that Khatate family is owner of agricultural field bearing Gat No.195 admeasuring 71 R, Gat No.193 admeasuring 23 R and gat No.194 admeasuring 182 R land.

9. As against this Supekar family is owner adjoining gat Nos.190 and 192. It is seen from the F.I.R. as well as papers of investigation that in the year 1969 grand father of the informant had purchased 86 R land from Gat No.195 and remaining 86 R land from that gat was purchased by Rambhau Supekar.

10. According to prosecution case, gat No.195/2 admeasuring 86 R went to the share of Balasaheb Khatate and he was possessing the same. However on 11.4.2016, the applicant/accused alongwith co-accused forcibly entered in the said filed bearing Gat No.195/2 and took possession of the same by erecting cement poles and by demolishing way.

11. It is seen from the documents placed on record, R.C.S. No.2046 of 1995 was instituted by Supekar family against the father of the deceased as well as his uncle for declaration, injunction as well as for removing encroachment. That suit was decreed on 30.8.2002 and decree is confirmed in appeal. The execution proceedings appears to be still pending. From the documents placed on record, it is seen that in execution proceeding on 28.4.2015, possession could not be taken

because of standing crop, but ultimately on 24.6.2015, the Executing Court, directed the Decree Holder to pay compensation of Rs.3,000/- and the Judgment Debtor was directed to hand over vacant possession. It is seen that on 26.6.2015, in pursuant to the warrant of possession, possession of encroached portion was delivered through the bailiff. However, it appears that there was some confusion regarding gat Number. The possession receipt gat No.194/1 whereas decree appears to be in respect of Gat No.195/1. Ultimately in writ petition, this Court had directed the learned trial Court to decide the issue afresh considering the decree.

12. Be that as it may, it is seen that prima facie there was civil dispute between the parties. The decree is in favour of Supekar family. The dispute regarding correct gat Number is being resolved by the competent civil Court. However, it seems that possession was already delivered to the decree holder on 26.6.2015. The perusal of F.I.R. goes to show that what happened on 11.4.2016 was erection of cement poles by the subsequent purchaser of the portion of gat No.195/2. F I.R. itself reveals that Supekar family had subsequently sold portion from gat No.195 to others including Vijay More and Deepak Khatate. Subsequently same appears to have been sold to Amit Kalbhor and Yuvraj Kalbhor. The allegations are that accused persons had entered in the filed and erected

cement poles. Even F.I.R. itself shows that Khatate family is still owner of other fields.

13. In this backdrop, consumption of insecticide on 23.4.2016 and resultant death of Balasaheb on 4.5.2016, is required to be viewed. It is needless to mention that section 107 of Indian Penal Code requires mens rea and without knowledge and intention there cannot be abetment. Prima facie it is seen that the act of commission of suicide by deceased Balasaheb is not common course of event and natural result of normal human conduct. When dispute was pending adjudication before competent court, of civil jurisdiction in the wake of delivery of possession by civil Court to Supekar family, it cannot prima facie be said that there was active suggestion or stimulation by applicants to deceased Balasaheb in commission of suicide. Recitals in the alleged note does not prima facie reflect ingredients of abetment.

14. In this view of the matter, considering the evidence against present applicants as and suicidal note does not reflect any harassment or torture and that too with requisite intention, liberty of applicants needs to be protected. Custodial interrogation of the applicants in all above Anticipatory Bail Applications is not warranted. Similarly pre-trial detention of applicants namely Chetan Harpale, Deepak Khatate and Vijay More in Criminal Bail Application No.1165 of 2016 is also not

warranted and therefore, following order.

Order

- I) All above applications are allowed.
- II) Applicants/accused namely Chetan Harpale, Deepak Khatate and Vijay More, arrested in connection with above crime be released on bail on their furnishing P. R. bonds in the sum of Rs.5,000/- by each of them and on furnishing sureties in the like amount.
- III) In the event of arrest of applicants, in above Anticipatory Bail Applications, they be released on bail on their executing P.R. Bonds in the sum of Rs.5,000/- by each of them and on their furnishing sureties in the like amount.
- IV) Applicants 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.
- V) The applicants in Anticipatory Bail Applications shall attend the concerned police station on 03.07.2016 and 10.07.2016 in between 11.00 a.m. to 1.00 p.m., and shall co-operate the Investigating officer.
- VI) The applicants shall not tamper with the prosecution evidence in any manner.

[A. M. BADAR, J.]