

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1987 OF 2016

1. Sunil Ramchandra Charoskar
2. Sandip Ambadas Zhalte

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Ramesh Dube-Patil i/b Ms. Shama Mulla Advocate for Applicant.
Mrs. Veera Shinde APP for the State.
Mr. M. S. Ranmale, P.S.I. Crime Branch, Nashik (Gramin)

CORAM : SMT. SADHANA S. JADHAV, J.**DATED : 17th NOVEMBER, 2016.****PC :**

- 1) Heard. This is an application under section 438 of the Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. I-206 of 2016 registered at Ghoti Police Station police station for offence punishable under sections 302, 323, 504 r/w 34 of the Indian Penal Code.
- 2) It is the case of the prosecution that applicant no. 1 is Police Head Constable and the applicant no. 2 is police constable posted at Ghoti Police

Station. On 19/10/2016, Dattu Dagale lodged a report at the police station alleging therein that he is the resident of Thakurwadi. That at about 5.00 p.m., he had met Balu Khodke on the road. At that time, two police personnels had come to the spot and had called upon Balu. They had abused him as according to them, he was under the influence of alcohol. They mounted assault upon him. Kalu Khodke had tried to intervene but to no avail. The first informant had specifically stated that Balu had fallen unconscious as he had sustained bleeding injuries on his head. In the meanwhile, Laxman Bodake, Shivram Mengal and other villagers came to the spot and they had taken Balu to the Primary Health Centre. He was declared dead. On the basis of the said report, crime no. I-206 of 2016 was registered against the applicants. It appears that from the proforma of the F.I.R. that the incident was reported on 19/10/2016 at night 22.45.

3) It is pertinent to note that on 21/10/2016, applicant no. 1 lodged a report at the police station alleging therein that on 19/10/2016, he was on patrolling duty and had gone to Thakurwadi, more specifically to the house of Balu Khodake at about 4.50 p.m. They had noticed that he was in the process of distilling illicit liquor. There was no range and therefore, he could not

contact the police station. According to him, 15 – 20 persons had gathered on the spot and had asked police constable not to raid the premises of Balu Khodake and that they should delete the photographs taken by them to show that it is a liquor den. That there was man handling. All the residents of Thakurwadi had gathered. At that time, Devram Khodake had abused police constable. That the people had brought sticks along with them. That they had also mounted assault upon the police by fist and kick blows and thereafter, there was an altercation. It is also alleged that the police constables were locked up in a room and therefore, they had become unconscious. When they regained consciousness, they found themselves in Bitko Hospital at Nashik Road. Hence, offence was registered against the residents of Thakurwadi for offence punishable under sections, 307, 333, 353, 341, 324, 143, 147, 148, 149, 117 of the Indian Penal Code.

4) It is submitted by the learned counsel for the applicants that on 19/10/2016, applicants had been to Thakurwadi, a hamlet of Adiwasi people. That the said people were distilling illicit liquor. That they had raided the premises. Thereafter, people had gathered on the spot. That applicants had assaulted Balu Khodake to such an extent that he had died on the spot.

5) Perused papers of investigation. Till today, police have not collected the post-mortem notes for the reasons best known to the crime branch. Investigation was transferred to crime branch three days after the incident and till today, post-mortem notes do not find place in the papers of investigation. Perused inquest panchanama. It is specifically stated in the inquest panchanama that there was a scuffle between the police and Balu Khodake and in the said scuffle Balu had sustained injury and had died. There is no description of injuries in the inquest panchanama. In all the columns, it is simply stated "As per the inquest".

6) The learned APP submits that at the time when the inquest panchanama was conducted, investigation was not with the crime branch. Investigating officer is present in the court and submits that inquest was conducted by the inspector of the Entertainment Tax Department. Investigating officer submits that the police were not permitted to remain present there. Papers of investigation do not include post-mortem notes but have injury certificates of the present applicants issued by private hospitals on 20/10/2016. It is apparent that they got the injury certificates and then lodged F.I.R. against the residents of Thakurwadi. Applicants had sustained abrasions. The certificates are issued

by Soham Hospital. The tenderness over left shoulder is described as grievous injury. It is apparent from the papers of investigation that the police is helping the present applicants who are also from the police department. A person has been killed by the guardians of law and order and the same cannot be overlooked.

7) The learned counsel for the applicants vehemently submits that the main business of the residents of Thakurwadi is distilling illicit liquor and transporting the same to Nashik City. That there is Law and Order situation. It is also submitted that the senior police officers had informed the present applicants that they should take action against distilling of illicit liquor and therefore, applicants had been to Thakurwadi on the given date.

8) The F.I.R. is lodged by the police constable, after they were prosecuted for offence punishable under section 302 of the Indian Penal Code, does not inspire confidence and it is only a report which is lodged as defence. There is tampering with the papers of investigation. There are serious lapses in the process of investigation and therefore, applicants do not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973.

- 9) Application, being sans merits, stands rejected.
- 10) Office to communicate this order to the Superintendent of Police, Nashik, forthwith.

(SMT. SADHANA S. JADHAV, J.)