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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2491 OF 2015

Kailash @ Ankush Yamaji Pune	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

CRIMINAL BAIL APPLICATION NO.2492 OF 2015

Yamaji Tukaram Pune	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Sandip Dilip Shinde for applicants.

Mr.Deepak Thakre, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 10TH AUGUST, 2016

P.C. :-

1. Applicants – father and son duo – who are accused in Crime No.139/2015 for the offences punishable under section 302 and 307 read with 34 of the Indian Penal and under sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered with Yeola Taluka Police Station, District Nashik by

these applications are seeking their release on bail.

2. Heard the learned counsel for applicants / accused. He argued that version of informant Chandrabhagabai Pagare is inconsistent so also contradictory. She has stated in the F.I.R. that accused persons were wearing black colour clothes and at the time of incident she was sleeping. The learned counsel submitted that in the supplementary statement, the informant stated that accused persons were wearing unclean clothes. In her statement before the Executive Magistrate, the informant has stated that at the time of the incident, she was sitting on the cot. The learned counsel submitted that in view of these inconsistencies in the statement of the informant and as the investigation is over, pre-trial detention of applicants is not warranted.

3. The learned APP submitted that version of the informant is corroborated by version of her son which discloses the motive for commission of the crime in question. The learned APP further drew my attention to the statements of the neighbourers by name Sopan and Bhaginath.

4. Perused the charge-sheet including the F.I.R. lodged by Chandrabhagbai Pagare. She is the widow of Onkar Pagare, who died in the incident in question. Anna Pagare is her son. The F.I.R. lodged by the informant widow goes to show that she along with her husband Onkar Pagare (since deceased) were residing in the field known as "Ranmala". Both applicants / accused are owners of the adjacent field. The informant and her husband were required to fetch water from the well in the field of applicants. This was the point of dispute between applicants, the informant and her deceased husband. According to the informant, applicants were suspecting that the informant and her husband are committing theft of articles from their field. Eight to ten days prior to the incident, applicant Yamaji had questioned her with the allegations that she had stolen tin of cotton seeds as well as spade. The informant averred that Yamaji had threatened and asked her not to enter their field.

5. On this backdrop, the informant further averred that in the night intervening 13th July, 2015 and 14th July, 2015 at about 1.00 a.m. she woke up because of assault on her. She saw both applicants assaulting her. She averred that they

also assaulted her husband Onkar. Weapon attributed to both applicants by the informant are sticks. The informant averred that because of assault by means of sticks by both applicants, her husband Onkar died on the spot whereas she suffered injuries.

6. In her supplementary statement, she disclosed that accused persons were not wearing black clothes but they were wearing unclean clothes. Thereafter, her statement came to be recorded by the Executive Magistrate while taking treatment at the hospital. In that statement, she disclosed that at the time of the incident, she was sitting on the cot.

7. Inconsistencies or contradictions in the statement of witness assumes importance only if it goes to the root of the prosecution case. Minor inconsistencies and variances in statement of witness are natural and particularly when the witness is an injured witness taking treatment at the hospital. One has to go to the core of the testimony of such witness. In her three statements, injured informant Chandrabhagabai is consistent in her version that both applicants have assaulted her as well as her deceased husband Onkar by means of

sticks. As such, minor inconsistencies in her version cannot have any overbearing importance and that too at the pre-trial stage.

8. As we are having eye witness account of the incident in question, motive is not relevant, but statement of Anna Pagare - son of the informant and deceased - reflects the motive of applicants in the crime in question. On 13th July, 2014 applicant Kailash @ Ankush insisted Anna Pagare to go to his native place from Nashik. Statement of Anna Pagare shows that applicant Ankush had informed him that his father i.e. deceased Onkar has an evil eye on women and his father will have to face the consequences thereof.

9. Bhaginath and Sopan are neighbours of the informant and the deceased. Their statements reveal the disclosure made to them by injured Chandrabhagabai soon after the incident. Consistent versions of both these witnesses goes to show that immediately after the incident, Chandrabhagabai disclosed them that both applicants have assaulted her as well as her deceased husband. Versions of both these witnesses as such is admissible under section 157

of the Evidence Act.

10. Perusal of the post mortem report goes to show extensive injuries caused to deceased Onkar in the assault in question. The post mortem report prima facie shows homicidal death with requisite intention and knowledge.

11. Totality of the foregoing circumstances does not allow me to disbelieve the version of the injured witness whose presence at the spot of incident is vouched by injuries on her person. No case for bail is made out. Both applications, are, therefore, rejected.

(A.M.BADAR, J.)