

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 87 OF 2016

(MOHAMMAD SAJID ABDUL HAMID & OTHERS...VS..STATE OF MAH., THR. PSO, PS BALAPUR,
DIST. AKOLA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 29, 2016.

CRI.APPLN.(APPP) NO. 226/2016.

Heard Shri S.I.Jagirdar, advocate for the complainant, Shri A.S.Mardikar, Sr.Advocate a/b. Shri S.G. Joshi, advocate for the applicants and Shri S.S.Doifode, A.P.P. for the non-applicant.

For the reasons stated in the application, the intervener is permitted to assist the prosecution.

The application is allowed.

CRI.APPLN.(ABA) NO. 87/2016.

Heard learned advocates for the respective parties.

The applicants are seeking pre-arrest bail in the crime registered against them for the offence punishable under Section 306 r/w 34 of the Indian Penal Code.

The accusation against the applicants is that they are associates of Deelip Katariya (main accused) who is running cable network. It is alleged that the applicants and Deelip Katariya pressurized the deceased who was also running cable network and because of the pressurizing tactics of the applicants and Deelip Katariya, the deceased has taken the extreme step of committing suicide. It is alleged that on the earlier day i.e. on 30th January, 2016 all the accused had severely beaten the deceased in market place twice i.e. at 10.00 a.m. and 6.00 p.m. because of which, as per the family members of the deceased, he was upset at night. It is alleged that in the morning of 31st January, 2016 some associates of Deelip Katariya had been to Balapur and after that the deceased committed suicide.

The learned A.P.P. has submitted that there are eyewitnesses of the incidents of beating which took place on 30th January, 2016. However, it is undisputed that there is no F.I.R. about the alleged two incidents of beating of deceased on 30th January, 2016.

The learned A.P.P. has relied on the following judgments to oppose the application :

1. Judgment given by the Hon'ble Supreme Court in the case of *Chitresh Kumar Chopra Vs. State (NCT of Delhi)*, reported in **(2009) 16 SCC 605**;
2. Judgment given by the Hon'ble Supreme Court in the case of *Praveen Pradhan Vs. State of Uttaranchal*, reported in **(2012) 9 SCC 734**;

3. Judgment given by the Hon'ble Supreme Court in the case of *Didigam Vs. State of U.P.*, reported in **2008 (2) Mh.L.J. (Cri.) 307**;
4. Judgment given by this Court in the case of *Pravin Baliram Rakh Vs. State of Maharashtra*, reported in **2014 ALL MR(Cri.) 958**;
5. Judgment given by this Court in the case of *Rashika @ Rishigandha Shetye vs. State of Goa*, reported in **2014 (1) Mh.L.J. (Cri.) 462**;
6. Order by this Court in the case of *Madhav Vs. State of Mah.*, reported in **2014 (2) Mh.L.J. (Cri.) 214**;
7. Judgment given by the Hon'ble Supreme Court in the case of *Ramesh Kumar Vs. State of Chhattisgarh*, reported in **(2001) 9 SCC 618**;
8. Judgment given by this Court in the case of *State of Maharashtra Vs. Santosh Hiranman Urankar*, reported in **2005(1) Bom.C.R. (Cri.) 513**;
9. Judgment given by the Hon'ble Supreme Court in the case of *Jai Prakash Singh Vs. State of Bihar*, reported in **2012 (3) SCALE 484**;

Except the judgment given in the case of *Madhav Premisingh Rathod* (supra) the other judgments are on the point of suspension of sentence or on the point of quashing of the prosecution. As far as the order given in the case of

Madhav is concerned the facts of that case are glaring and looking to the nature of the offences, the High Court had set aside the order passed by the Sessions Court granting pre-arrest bail. Other judgments relied upon by the learned A.P.P. do not assist the prosecution and are distinguishable.

The applicants have stated that they had not been involved in any crime earlier and this fact has not been controverted by the non-applicant. The non-applicant has not been able to show that the custody of the applicants is necessary for further investigation.

In view of the facts on record and considering the nature of allegations, I am satisfied that the applicants are entitled for pre-arrest bail.

Hence, the following order :

- i) In the event of arrest in Crime No. 31 of 2016, registered by the non-applicant, the applicants shall be released on bail on furnishing P.R. Bond for Rs. Twenty Five Thousand each and one solvent surety in the like amount for each of the applicant.
- ii) The solvent surety shall be furnished by the resident of Balapur, District : Akola.
- iii) After the charge-sheet is filed, the applicants shall attend every date of sessions trial unless exempted by the Sessions Court. In case, any of the applicant fails to attend any date of the sessions trial without seeking exemption from the Sessions

Court, this order shall stand recalled as far as that applicant is concerned.

The application is allowed in the above terms.

JUDGE

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