

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

CRIMINAL APPLICATION NO. 183 OF 2017

1. Sau. Suwarna w/o Babasaheb Salunke
Age 26 years, Occu. Household & Agri.
R/o Bhalgaon, Taluka Gangapur,
District Aurangabad
 2. Sau. Bhagyashree w/o Abasaheb Salunke,
Age 23 years, Occu. Household & Agri.,
R/o Bhalgaon, Taluka Gangapur,
District Aurangabad
 3. Bapusaheb s/o Shankar Pawar,
Age 52 years, Occu. Agri.,
R/o Kankori, Taluka Gangapur,
District Aurangabad .. Applicants
- Versus
- . The State of Maharashtra,
Through Police Station, Sillegaon,
Taluka Gangapur,
District Aurangabad .. Respondent

Mr S.S. Tope, Advocate for applicants
Mr S.N. Morampalle, A.P.P. for respondent
Mr M.B. Sandanshiv, Advocate for complainant, assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 7th February 2017

PER COURT

1. The applicants are seeking regular bail in C.R. No.0320/2016, registered at Shillegaon Police Station, Taluka Gangapur, District Aurangabad, for the offences punishable under Sections 307, 302, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code.

2. The crime in question came to be registered after recording the dying declaration of deceased Nirmala on 20th December 2016. In said dying declaration, she has named in all five accused including that of the three applicants before this Court and in categorical terms, has stated that she is not remembering or able to narrate as to who has set her on fire or poured kerosene.

3. Subsequently, her statement was again recorded in the form of dying declaration wherein she has named the present applicants as the accused.

4. The background of commission of crime in question is a dispute in relation to the land bearing Gut No.125, the common space over which the applicants and the family of the complainant were fighting.

5. Apart from above, it is alleged in the first information report that the applicants and complainant since are close relatives, were residing in an adjoining house.

6. In the above referred background, while trying to make out the case for grant of regular bail, learned Counsel for the applicants would invite my attention to the fact that the applicants no.1 and 2 are aged about 26 and 23 years, having small children below five years of age. It is then claimed that applicant no.3 - Bapusaheb is father of Bhagyashree and father-in-law of co-accused Abasaheb. Husbands of applicants no.1 and 2 namely Babasaheb Salunke and Abasaheb Salunke are already arrested in the crime in question.

7. In above referred background, learned Counsel for the applicants submits that after the custodial interrogation of the applicants is over, their further detention is not warranted. It is also tried to be relied upon that the applicant no.3 – Bapusaheb is resident of village, which is adjoining to the village where the incident took place.

8. While opposing the application, learned Addl. Public Prosecutor submits that in dying declaration, recorded by the Executive Magistrate, the applicants are very much named as accused. According to him, the history as regards the dispute in relation to common space in the agricultural property speaks of intention on the part of the applicants in commission of crime in question. Learned Addl. Public Prosecutor, who is ably assisted by the learned Counsel for the complainant disputes the contention of the applicants that the applicants no.1 and 2 are having children of such an age. Learned Addl. Public Prosecutor then would rely upon the statement of husband of the complainant, her son so as to narrate the prima facie involvement of the applicants in the crime in question.

9. Having considered the rival submissions and having perused the investigation papers, what could be ascertained from the contents of the first information report is, the complainant at the first instance narrates that she was set on fire, however, in categorical terms has stated that she is not in a position to name the persons who are responsible for pouring kerosene or setting her on fire. According to

her, in the said dying declaration, in all five accused are involved in the crime in question.

10. What could be noticed from the investigation papers is, of the same date, there are two dying declarations on the record, one implicates the applicants and second does not name the present applicants with any specific role of participation of crime in question.

11. In the wake of above investigation, in my opinion, there is a serious doubt as regards the involvement of the applicants in the crime in question, when in first dying declaration, the applicants were not named as accused. In the above referred appreciation, coupled with the fact that applicants no.1 and 2 are having children below the age of five years and the applicants were already subjected to custodial interrogation, in my opinion, deserve to be released on bail, on the following conditions :

(a) The applicants be released on bail in C.R.No.0320/2016, registered at Shillegaon Police Station, Taluka District Aurangabad, for the offences punishable under Sections 307, 302, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code, upon each of them furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.

(b) The applicants shall not influence the prosecution witnesses and shall not tamper with the prosecution evidence.

(c) The applicants shall keep themselves away from the jurisdiction of Police Station, Shillegaon, Taluka Gangapur, District Aurangabad till filing of the charge-sheet.

12. Criminal Application stands allowed accordingly.

(N.W. SAMBRE, J.)

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