

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1125 OF 2017

Lalji s/o. Donga Padwi

....Applicant.

Versus

The State of Maharashtra

....Respondent.

Mr. R.S. Shinde, Advocate for applicant.

Mr. S.D. Ghayal, APP for respondent.

WITH
CRIMINAL APPLICATION NO. 781 OF 2017

Khimji Gawalya Padvi

....Applicant.

Versus

The State of Maharashtra

....Respondent.

Mr. Girish Nagori, Advocate for applicant.

Mr. S.D. Ghayal, APP for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 17th March, 2017.

ORDER :

1. Both the applications are filed for bail. Both the sides are heard.
2. The chargesheet is filed against both the applicants for offence punishable under section 302 r/w. 34 of Indian Penal

Code by Dhadgaon Police Station, Nandurbar in C.R. No. 38/2016. The incident in question took place on 1.9.2016 after 10.00 p.m. Deceased Hatya Padvi was cousin of applicant - Lalji. Applicant from other proceeding - Khimji is son of main accused - Gawlya Padvi. There was some dispute between applicants and Gawlya Padvi on one side and deceased Hatya on the other. On 1.9.2016 at about 12.00 noon applicants and main accused had entered the house of deceased and they had picked up quarrel on aforesaid count. He had somehow convinced the applicants and Gawlya and they had returned from the house of deceased. They again came to the house of deceased at about 10.00 p.m. on the same day and they called him by giving call to him. When Hatya was coming out of the house due to the call, present applicants and Gawlya started assaulting him with fist blows and kicks. Then all of a sudden, Gawlya gave blow of knife on the abdomen of Hatya. The intestine came out due to the blow and then present applicants and Gawlya ran away.

3. Hatya was shifted to three hospitals and he died due to aforesaid injury after about one and half months. It was a stab injury. One weapon like knife is recovered on the basis of statement given by Gawlya. C.A. report in respect of the weapon is not yet received.

4. There is statement of eye witness like Ganpat also. The F.I.R. of the deceased can now be used as dying declaration. The learned APP submitted that there is more than sufficient material against the accused to make out the prima facie case for the offence of murder.

5. Applicant - Lalji is aged about 60 years. Other applicant is son of main accused. The M.L.C. and other record show that only one injury was found on the dead body and that injury caused the death. There are circumstances that the present applicants were not holding the weapons and they assaulted the deceased by fist blows and kicks and only Gawlya used the weapon. It can be said that it will be open to the present applicants to show that they had no intention and they had no knowledge that Gawlya was likely to use the weapon. Immediately after giving one blow by Gawlya and when they saw that intestine came out, they ran away. This circumstance needs to be kept in mind while ascertaining the intention behind the act. Further, there was dispute of aforesaid nature between these families.

6. The submissions made show that the applicants are

behind the bars for about five months now. The main accused is still behind the bars. The submissions made do not show that the applicants had bad antecedents. In view of these circumstances, this Court holds that bail can be granted to the applicants subject to some conditions.

7. In the result, the applications are allowed. The applicants are to be released on bail on their furnishing PR and SB of Rs.25,000/- by each of them. They are not to tamper with the prosecution witnesses. They are not to enter village Trishulcha Wadyadongar, Tahsil Dhadgaon till the disposal of the case which is filed against them. This circumstance is not to be used for granting bail to the main accused.

[T.V. NALAWADE, J.]

SSC/