

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

8 CRIMINAL APPLICATION NO. 1281 OF 2017

USHABAI W/O AKASH @ ASHOK MAPARI & OTHERS
VERSUS
THE STATE OF MAHARASHTRA

Shri. N.B. Narwade, Advocate, for applicants.

Shri. S.N. Morampalle, Additional Public Prosecutor, for
respondent.

Coram: T.V. NALAWADE, J.

Date: 15 March 2017

ORDER:

1) The application is filed for relief of anticipatory bail. Both the sides are heard.

2) It is surprising that when the incident took place on 8-8-2011 and the crime was registered on 8-8-2011 itself, for offences punishable under section 302 etc. of the Indian Penal Code, police did not arrest the present applicants and they have come to this Court first time in the year 2017 for the relief of anticipatory bail. This single circumstance is sufficient to say much against the

investigating officer. The Superintendent of Police Ahmednagar is expected to look into the matter and make inquiry against the investigating officer to find out as to why in such a case involving one dying declaration of the deceased, the accused are not arrested.

3) The crime was registered on the basis of the dying declaration recorded on 8-8-2011 by Special Executive Magistrate. The deceased was a widow. There was some litigation between the family of the applicants and the family of the deceased. On 8-8-2011 at about 3.00 p.m. present applicants, one Dada Mapari along with other persons went to the house of the deceased and they started asking her about her son-in-law. They had said that they were there to see that everybody from her family is finished by burning. She disclosed that she was then assaulted by these persons including by the present applicants. In the dying declaration she has made specific allegation against the present applicants that they had made her to fall on the ground, they had held her when Dada Mapari was pouring kerosene on her person and then Dada set fire to her. She disclosed that due to terror

created by Dada Mapari and their family members, no villagers tried to intervene. As per her version Akash Mapari had suffered externment order and he was goonda by nature. The dying declaration was recorded on that day between 7 and 8 p.m.

4) Learned counsel for the applicants submitted that prior to that date i.e. on 7-8-2011 FIR was given by family members of the present applicants against the members of the family of the deceased that they had forcibly taken away Akash Mapari in a vehicle and they had committed the offence punishable under sections 366, 341, 34 etc. of the Indian Penal Code. The learned counsel for the applicants submitted that dead body of Akash was traced and case was also filed against some persons (not against the present complainant). But they came to be acquitted in the said case. The learned counsel for the applicants submitted that when in the previous case there was allegation that Akash was forcibly taken away on 7 August 2011, it does not look probable that the incident in question took place on 8-8-2011. This submission is not acceptable as Akash had not come to the

house of the deceased but his son Dada Mapari had come there along with other persons. This creates probability that due to absence of Akash, the members of the family of Akash were thinking that the deceased and her family members were responsible for missing of Akash and so they had gone to the house of the deceased. These circumstances which were argued in favour of the applicants are not the circumstances in their favour but they can be used against the applicants.

5) There is other material to corroborate the disclosure made in the dying declaration. When there is specific dying declaration against the present applicants that they actively participated in the incident this Court holds that relief of anticipatory bail cannot be granted in their favour. Learned counsel submitted that name of present applicant No.2, Dipali is not mentioned in the FIR and this circumstance is sufficient to grant relief to her. This submission is not acceptable as the charge sheet is not yet filed and the police could not complete the investigation as no accused person is arrested. Further there is a circumstance that they have come to the Court

in the year 2017 and till this date the police did not take action against the applicants for which this Court has already made some observations. In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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