

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2420 OF 2017

- 1 Amol s/o Yashwant Nimbalkar, Age 34 years, Occ. Servic, Yeshashri Coaching Classes.
- 2 Jayaji Vithal Wakure, Age 39 years, Occ. Business.
- 3 Vaijinath s/o Shankar Khose, Age 43 years, Occ. Service, Yeshashri Coaching Classes. ... **Applicants.**

All r/o. Tambri Vibhag, Osmanabad
Tq. & Dist. Osmanabad.

V E R S U S

The State of Maharashtra, **Respondent.**
Through police station officer
Washi police station, Tq. Washi,
Dist. Osmanabad.

Mr. N.V. Gaware, Advocate for the Applicants
Mr. K.N. Lokhande, A.P.P. for the respondent/State

WITH

CRIMINAL APPLICATION NO. 2421 OF 2017

- 1 Ravikant Shivaji Shitole, Age 38 years, Occ. Service Yashshri Coaching Classes, R/o. Naikwadi Nagar, Osmanabad Tq. & Dist. Osmanabad. ... **Applicants.**

- 2 Govind Kundlik Chavan, Age 43
years, Occ. Business, R/o. Barshi
Naka Osmanabad, Tq. & Dist.
Osmanabad.

V E R S U S

The State of Maharashtra,
Through police station officer
Washi police station, Tq. Washi,
Dist. Osmanabad.

Respondent.

Mr. S. N. Patil, Advocate for the Applicants
Mr. K.N. Lokhande, A.P.P. for the respondent/State

CORAM : K.L. WADANE, J.

DATE : 21st JUNE, 2017

ORDER :

1. Heard Mr. Gaware, and S.N. Patil, learned
counsels for the applicants and Mr. Lokhande, learned
APP for the State.

2. The complainant i.e. wife of the deceased
lodged private complaint in the Court of the Judicial
Magistrate, First Class, Bhoom, alleging that her
husband namely Avinash Autade was running Disha Career
Academy at Osmanabad. Initially, he was running

coaching classes with accused No. 4 and 5. Thereafter he independently started his own coaching classes since 2007. Large number of students were appearing for competitive examination in the coaching classes of her husband. Said Academy is famous educational institution. There was some dispute between her husband and accused No. 1,2,4, and 5.

3. On 13.11.2016, the accused No. 1 to 5, the husband of the complainant and some other persons have arranged lunch at the spot of incident. However, on the same day, cousin of the complainant Aniket Jadhav received a phone call at about 6.30 p.m. and came to know that the husband of the complainant is died due to drowning. His dead body was brought to the civil hospital Osmanabad. When the relatives of the complainant and brother of deceased Vishwash Autade observed the body, they found, the body was blackish in colour, therefore they suspect death of Avinash and therefore requested to perform postmortem in-camera. Thereafter, accidental death was registered at police station Osmanabad.

5 During the course of arguments, learned APP
Mr. K.N. Lokhande has referred the conversation of
the accused persons and the deceased on Whats-up and
has submitted that, one of the accused Vaijinath
Khose invited Avinash for the lunch. He further
points out the statements of eye witnesses Meenabai
Sonne and Mahadeo Mote, who were present at the spot
when the alleged incident took place. Main allegations
are that the present applicants either administered
the poison to the deceased or they have assaulted, due
to which he drown, otherwise it was not possible,
because, the deceased was very good swimmer.

6. Mr. Gaware learned advocate appearing for the
applicants argued that the allegations about the
administration of poison seems to be false, because
the report of viscera shows that no poison was
detected in the sample. Furthermore, there are two
injuries on the person of deceased and that injuries
are not co-related with the death of the deceased.

6 It is material to note, if at all, the wife
of the complainant or brother of the deceased were

suspecting death of the deceased, then it was necessary for them to lodge complaint to the concerned police station immediately. Learned APP submits that they have tried to submit the complaint before the police authority, but such complaint was not taken. Learned APP mainly relied upon the statements of Meena and Mahadeo. On perusal of statement of Meenabai it appears that she was present near the spot. At that time she heard noise as "Wachva-Wachva", as a person was drowning in the water. At that time one of the applicants namely Vaijinath Khose and his friends probably other applicants came there and amongst them one Jivan Khose tried to search the deceased in the water and found subsequently. The deceased was removed from the water. At that time this witness noticed that the deceased had vomited. Looking to the statement of the witness, it appears that, it exactly supports the case of the applicants that the deceased consumed alcohol, due to which he lost his skill of swimming and therefore he drowned and died.

7 The papers of investigation of A.D. No. 79/2016 are made available. On perusal of the same,

it appears that, the statement of all the applicants were recorded during the enquiry of A.D. Now, again the investigating officer wants the custody of the applicants for the purposes of recording their statements. From the statements of the witnesses recorded during the enquiry of the A.D., it appears that, the deceased, before lunch, had taken alcohol and thereafter entered into tank for swimming. Due to the consumption of alcohol, he might have lost his skill of swimming. However, at this stage, it is not necessary to go through each and every aspect of the matter, since the litigation is at very primary stage and therefore this court restrict its observation to the extent of consideration of prayer of the accused for bail.

8 I have also perused the statement of Mahadeo Mote. Considering the statement of all the witnesses there is no evidence even prima-facie to show that the applicants or any one of them have administered poison to the deceased or they have assaulted the deceased. In such circumstances, it is difficult to accept the contentions raised on behalf of the prosecution.

9. From the copy of the applications submitted by the applicants dated 17.5.2017, it appears that, they are ready to attend the police station as and when required. They have given their addresses along with land line phone numbers and mobile numbers. This goes to show that, the accused persons are not running away from the investigating officer or from the enquiry in reference to the accidental death or alleged offence of murder.

10. On perusal of the postmortem report particularly, the opinion as to the cause of death, it reveals that the probable cause of death is asphyxia due to drowning. However, the viscera is preserved for chemical analysis. Now the investigating officer has submitted the report of Chemical Analyzer which shows that in general and specific chemical testing does not reveal any poison in Exh. 1 and 2 i.e. viscera of the deceased. After receipt of the viscera report, the concerned medical officer has given final opinion as to cause of death i.e. death due to asphyxia due to drowning.

11. Considering the above facts and circumstances of the case, the applicants were available for the purpose of investigation. Therefore, no custodial interrogation is needed nor it is specifically contended by the prosecution, what is to be recovered from the applicants. In view of the above, I am of the opinion that the applicants can be enlarged on anticipatory bail. Hence, both the applications (Cri. Bail Application No. 2421/2017 and 2420/2017) are allowed. Hence, following order.

O R D E R.

- i) In the event of arrest of the applicants in connection with Crime No.85 of 2017, registered with Police Station Washi Tq. Washi, Dist. Osmanabad, they be released on bail on their furnishing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount.
- ii) The applicants shall attend to police station for the purpose of investigation as and when required/called by the concerned investigating

officer.

iii) The applicants shall not tamper the evidence of the prosecution in any manner.

4 Criminal applications are disposed of.

(K.L. WADANE, J.)

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