

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

CRIMINAL APPLICATION NO. 5193 OF 2017

1. Jagdish Chhaganrao Pardeshi
Age: 54 years, Occu.: Business,
R/o Vasant Bhavan, Machlikhadak,
Aurangabad.

2. Shamabai Chhaganrao Pardeshi
Age: 70 years, Occu.: Household,
R/o Vasant Bhavan, Machlikhadak,
Aurangabad.

..APPLICANTS

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. P.F. Patni, Advocate for applicants.
Mr. K.N. Lokhande, A.P.P. for respondent - State.

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CORAM : V.L. ACHLIYA, J.
DATED : 23rd NOVEMBER, 2017

ORDER :

1. The applicants lying arrested in connection with offences u/s 302, 307, 498-A, 504, 506 r/w 34 of I.P.C. registered vide C.R. No. 0575 of 2016 with City Chowk Police Station, Aurangabad have preferred this application seeking release on bail.

2. At the outset, the learned Counsel for the applicants not pressed the application for applicant no.1 and pressed the application to the extent of applicant no.2 with contentions that applicant no.2 is more than 70 years of age and there is nobody in her family to take care of the grand-mother of applicant no.1 who is more than 90 years. In this view, the applicant confines to release of applicant no.2.

3. The learned Counsel submits that case of the prosecution is entirely based upon two dying declarations. It is contended that there are number of infirmities in dying declarations relied by the prosecution and cannot form basis to convict the accused u/s 302 of I.P.C. He submits that though it is the case of prosecution that the incident was occurred in day time and the locality surrounded by number of houses, not a single witness has been cited who has seen the accuse coming out of the house where alleged incident was occurred. It is further pointed out that in the dying declaration shown to be recorded by the Executive Magistrate, there is overwriting as to the date of the incident. There is no attestation made below the thumb impression of the maker of the statement. So also name of the person below the thumb impression is mentioned as Basanti Chagan Pardeshi. Whereas the name of the maker of the statement is disclosed as Basanti Jagdish Pardeshi. It is contended that the applicant no.2 is an old aged woman. She is more than 70 years of age and

lying in jail since 30th April, 2017. He further submits that grand-mother of applicant no.1 is more than 90 years old. Since both the applicants are lying in jail, there is no one in their family to take her care. It is contended that looking to the pendency of the cases, it may not be possible to conduct the trial within a short period. He, therefore urged to release applicant no.2 on bail.

4. On the other hand, the learned A.P.P. opposed the application and contended that instead of granting bail to applicant no.2, trial Court may be directed to expedite the hearing of the case.

5. On due consideration of the submissions advanced, I am of the view that at this juncture it is not desirable to make any observation as to merit of prosecution case as well as infirmities and flaw in the alleged dying declarations. On the basis of overall evidence, it can be stated that there is prima facie case to connect the applicants with the offence registered against them. However the fact remains that the applicant is an old aged woman and aged 70 years. She is lying in jail since April, 2017. Son of applicant no.2 is also lying in jail, since 11 February, 2017. There is no one in their family to take care of grand-mother of applicant no.1 – Tulsabai Babulal Pardeshi who is claimed to be more than 90 years of age. As per the xerox copy of her Aadhar Card which is annexed as Exhibit “D” to application, her date of birth is shown

as 01st January, 1927. Therefore, considering the age of applicant no.2 and age of grand-mother of applicant no.1, who is aged about 90 years, I am of the view that applicant no.2 be enlarged on bail. Looking to pendency of the cases, it may not be possible for the trial Court to decide the case within short time. I am therefore inclined to allow the application to the extent of applicant no.2. Hence following order :-

ORDER

(i) Application stands disposed of as withdrawn to the extent of applicant no.1.

(ii) Application is allowed to the extent of applicant no.2.

(iii) Applicant no.2 – Shamabai w/o Chhaganrao Pardeshi be released on bail in connection with offence u/s 302, 307, 498-A, 504, 506 r/w 34 of I.P.C. registered vide C.R. No. 0575 of 2016 with City Chowk Police Station, Aurangabad on her furnishing bail in the sum of Rs.15,000/- with one surety in like amount on following conditions:-

(a) Pending disposal of the trial, applicant no.2 shall attend City Chowk Police Station, Aurangabad on

last day of every month in between 10 a.m. to 11 a.m. to record her appearance.

(b) Applicant no.2 shall not indulge into act amounting to tapering of prosecution witness.

(c) Applicant no.2 shall furnish the names and addresses of her three close relatives along with their contact numbers.

(iv) In the event of breach of any of the condition, bail granted to applicant no.2 shall liable to be canceled.

(v) The Additional Sessions Judge, Aurangabad is directed to expedite the hearing of the case and decide the case as expeditiously as possible and preferably within a period of one year from the date of this order.

(vi) Bail to be furnished before the trial Court.

(vii) Application stands disposed of in above terms.

(V. L. ACHLIYA, J.)

SSD