

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.967 OF 2017

1. Poriya s/o Doga Kulmethe,
2. Yerra s/o Masa Madavi, Tah. Aneri, Dist. Gadchiroli

-vs-

State of Maharashtra, Thr. PSO, Sub PS Damrancha, Tah. Aheri, Dist Gadchiroli

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri N. B. Rathod, Advocate for applicants.
Shri S. M. Ghodeswar, APP for non-applicant/State.

CORAM : A.S.CHANDURKAR, J.
DATE : November 07, 2017

Heard.

The applicants who have been arrested on 10/01/2017 in connection with Crime No.003/2016 registered with Sub-Police Station Dhamrancha, Dist. Gadchiroli for the offence punishable under Sections 302, 109, 143, 147, 149, 120(B) of the Indian Penal Code, under Sections 5 and 27 of Indian Arms Act as well as Sections 13, 16, 18 and 20 of Unlawful Activities (Prevention) Act, seek their release on bail.

As per the report dated 30/12/2016 lodged by one Soni Madavi, on the previous night when her husband was asleep at her house some persons had come to her place who were alleged to be naxalites. The husband of the informant was taken away on the ground that some inquiries were to be made with him. After sometime, the informant heard the noise of gun fire. On the next day in the morning her husband was

found dead. On that basis report came to be lodged. During the course of investigation, after recording statements the present applicants came to be arrested. On completion of investigation, charge-sheet has been filed on 11/03/2017.

It is submitted on behalf of the applicants that the applicants have been implicated merely as an afterthought. Though the applicants were residing in the same village, they were not named by the informant while lodging the report on 30/12/2016 and who subsequently claimed to have seen them on the night of the incident. The report was translated from the local dialect by one Chinna Madavi. His statement was recorded on 01/01/2017 and the applicants were named by him for the first time. It is submitted that though said translator was present when the report was lodged, his statement was not recorded on that day. It is then submitted that the only allegation against the applicants is that they were sympathizers of the naxalite movement and were last seen with the deceased. In the charge-sheet as filed, offences under the provisions of Unfair Activities (Prevention) Act had not been registered against them. It is therefore submitted that the applicants deserve to be enlarged on bail.

The application is opposed by the learned Additional Public Prosecutor by relying upon the reply. It is submitted that the statements of the brother of the deceased as well as the translator indicate involvement of the present applicants. Subsequent statements recorded in February 2017 of other villagers also refer to the present applicants. As they were last

seen with the deceased, their involvement is apparent. It is further submitted that other accused are yet to be arrested and if the applicants are released there is likelihood of the witnesses being influenced.

Perused the First Information Report as well as documents filed along with the charge-sheet. The report in question is dated 30/12/2016. It is lodged by the widow of the deceased. She has not named the applicants herein though according to her she had identified some other accused when her husband was taken away. The first reference to the present applicants in general terms is on 31/12/2016 by the informant when it is stated that applicants were indulging in activities to support the naxalites. The applicants have been named in the statement of the brother of the deceased even on that context. The statement of the translator who was present when the initial report was lodged has been recorded after two days on 01/01/2017 and he has named the applicants.

Considering the nature of material available on record which does not directly connect the applicants with the alleged offence and as the charge-sheet has now been filed after completion of investigation, a case has been made out for releasing the applicants subject to imposing conditions.

Accordingly the applicants who have been arrested in connection with Crime No.003/2016 registered with Sub-Police Station Dhamrancha, Dist. Gadchiroli for the offence punishable under Sections 302, 109, 143, 147, 149, 120(B) of

the Indian Penal Code, under Sections 5 and 27 of Indian Arms Act and Sections 13, 16, 18 and 20 of Unlawful Activities (Prevention) Act, are directed to be released on bail on furnishing PR Bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety each in the like amount.

The applicants shall not enter the limits of Tahsil Aheri till completion of the trial. They shall attend the Court of Sessions at Gadchiroli as per the directions of the learned Sessions Judge and co-operate in completion of the trial. They shall not take any steps to influence the prosecution witnesses.

The observations made in this order are only for deciding this application which is allowed and disposed of.

JUDGE