

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

CRIMINAL APPLICATION (ABA) NO. 698 OF 2019

Ishwar s/o Bhaskar Wakode and others .Vs. State of Maharashtra,through
P.S.O, P.S. Khamgaon, Dist. Buldhana.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.S. Wathore, Advocate for applicants.
Mr. J.Y. Ghurde, A.P.P. for non applicant- State.
Mr. M.N. Ali, Advocate for intervenor.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 02, 2019

CRIMINAL APPLICATION (APPP) NO. 1745 OF 2019

This is an application for assisting the prosecution
filed by the original complainant.

For the reasons stated in the application, the
application is allowed. Mr. M.N. Ali, learned counsel is
allowed to assist the prosecution.

The application is disposed of.

CRIMINAL APPLICATION (ABA) NO. 698 OF 2019

This is an application for pre-arrest bail since
applicants are apprehending their arrest in connection with
Crime No.485/2019 registered with Police Station,
Khamgaon (City), District Buldhana for an offence
punishable under Section 307 read with Section 34 of the
Indian Penal Code.

Heard Mr. P.S. Wathore, learned counsel for the

applicants, Mr. J.Y. Ghurde, learned Additional Public Prosecutor for the non applicant-State and Mr. M.N. Ali, learned counsel for the intervenor. Also perused the detailed reply filed on behalf of the prosecution.

The first information report is lodged in view of the statement of Sau. Sharda in the General Hospital, Khamgaon. Victim Sharda who survived from the attempt of the applicants to kill her, gave her statement to Police Station Officer in presence of the Doctor who was attending her and her statement was recorded after the certification of the Doctor that she was fit to give her statement. The applicants are husband, father-in-law and mother-in-law of Sharda.

As per statement of Sharda, her marriage was performed six years ago and having one son and one daughter. Prior to two years applicant no.1 – Ishwar performed second marriage though the matrimonial tie between applicant no.1 and Sharda was still in subsistence. After his second marriage, applicant no.1 started residing at Hivra (Bk.). As per statement of Sharda, on 15.09.2019 at about 09:30 in the morning, when she was present at her house at Tayde Colony, the applicants and co-accused Radha second wife of applicant No.1-Ishwar, came in a four-wheeler and Ishwar asked Sharda that she should give consent for his companionship with Radha and also asked Sharda to vacate the premises. As per statement of Sharda, when she refused to accept the proposal or the request made by applicant no.1-Ishwar, applicant nos. 2 and 3 caught hold

her and the applicants and co-accused Radha administered poison. In the process she raised hue and cry and therefore, one Gautam Surwade, Arun Dongare, Manoj Dandge and Anita Surwade came there and noticing their presence applicants and co-accused ran away from the spot.

Submission of the learned counsel for the applicants Mr. Wathore is that applicants are falsely implicated in the crime. He submits that there were in all seven proceedings, mostly non-cognizable cases, were filed against the applicants by Sharda from 05.02.2017 onwards. He also submits that civil cases are also pending in between them and the house in which Sharda resides belongs to applicant no.2 and she wish to grab the said house. He also relied upon the decisions of Hon'ble Delhi High Court and Hon'ble Karnatka High Court in **Harsh Rastogi Vs. State**, reported in (2005) 8 AD (Delhi) 1 and in **Narendra Babu Vs. State of Karnatka**, reported in (2016) 2 AIR (KarR) 355. He also submits that applicant no.1 is a Government servant whereas applicant nos. 2 and 3 are aged persons. He, therefore, submits that the application be allowed.

Per contra, Mr. Ghurde, learned Additional Public Prosecutor for non-applicant-State by filing detailed reply opposed the application. He also made available the investigation papers for my perusal.

Even from the reply filed on behalf of the State it appears that there are several cases pending in between the parties, civil as well as criminal. It clearly shows that the relations between the applicants and injured Sharda are not

only soared but there is enmity. Enmity is always a double edged weapon. Whether it was weapon or it was a shield has to be decided after a full dressed trial. At this stage, the Court has to give importance to the said fact after scrutinizing the material placed on record in which the applicants are seeking anticipatory bail.

The statement of Sharda was an immediate one. It was recorded by the Police Station Officer after obtaining certificate of fitness from the Doctor who was attending her. In her statement she has specifically attributed respective overt acts of the applicants. The incident in question was witnessed by Gautam Surwade, Vandana Ingale, Anita Surwade and Lata Jadhao. At this stage, I am not impressed with submission of the learned counsel for the applicants that their presence is improbable since it is a question of evidence. Their statements would show that on the day of the incident when these witnesses were present in the house of one Sadashiv, which is adjacent to the house of Sharda, for *Shraddha* ceremony, they heard loud noise and therefore, when they approached to the house of Sharda, they noticed that applicant nos. 2 and 3 were holding Sharda and applicant no.1 was administering poison.

The criminal cases has to be decided on its own facts. There cannot be a straight jacket formula for deciding the application for anticipatory bail. In view of the specific accusation against the applicants, not only by the injured but also by the independent eye witnesses, the decisions of Hon'ble Delhi High Court and Hon'ble Karnatka High Court

are not helpful to the applicants.

The nature of the accusation is very serious even according to the learned counsel for the applicants, the house in which the injured resides, belongs to applicant no.2. The accusation against the applicants is that they were demanding that Sharda should vacate the premises and upon getting negative reply they took steps of finishing the life of Sharda. However, only with the grace of god her life is saved. In that view of the matter, I see that there is no merit in the case. Consequently, the application is rejected.

JUDGE

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