

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO.955 OF 2020

1. LAXMAN S/O. PANDU ONAME
2. BALAJI S/O. PANDURANG ONAME
VERSUS
THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO.1891 OF 2020

IN BA/955/2020

SANJAY DAYANAND SUDE
VERSUS
LAXMAN S/O PANDU ONAME AND OTHERS

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Advocate for Applicants : Mr. Ostwal Abhaykumar D.
APP for Respondent-State : Mr. R. V. Dasalkar.
Advocate for Informant to assist APP : Ms. A. S. Jadhav h/f Mr.
P. R. Katneshwarkar.

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CORAM : V. K. JADHAV, J.
DATE : 09.12.2020

PER COURT :-

1. Heard learned counsel Ms. A. S. Jadhav holding for Mr. P. R. Katneshwarkar for the applicant in Criminal Application No.1891 of 2020. For the reasons stated in the application, Criminal Application is allowed in terms of prayer clause "B". Criminal application accordingly disposed off.

2. The applicants are seeking regular bail in connection with Crime No.150 of 2019 registered with Shiruranantpal Police Station, District Latur for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 504 read with Section 34 of the I.P.C. and Section 135 of the Mumbai Police Act. Their application with similar prayer below Exh.8 in Sessions Case No.2 of 2020 came to be rejected by the learned Additional Sessions Judge, Nilanga, District Latur.

3. The learned counsel for the applicants submits that the investigation is over and the charge-sheet has been submitted. The applicants are in jail in connection with the present crime since 04.10.2019. The learned counsel submits that though the names of the applicants are mentioned in the FIR, however, no specific role has been ascribed to them. The learned counsel submits that there is a longstanding enmity on account of the dispute in respect of the agricultural land and even the civil suit is also pending before the Court. The learned counsel submits that in a supplementary statement recorded belatedly i.e. on 14.10.2019 and for the first time, the informant has ascribed a role to these applicants as an instigator. The learned counsel for the applicants submits that even though the

informant for the first time ascribed a specific role as an instigator to these applicants in his supplementary statement, however, the other injured eye witnesses are silent even about the presence of these applicants on the spot at the time of alleged incident.

4. The learned counsel for the applicants submits that in respect of the incident occurred on the same date, time and place, co-accused Dnyanoba has lodged the complaint in the concerned Police Station against the present informant and eight others for having committed an offence punishable under Sections 307, 325, 326, 324 etc. of the IPC and on the basis of his complaint, Crime No.151 of 2019 came to be registered in the same police station. The learned counsel submits that there was almost a free fight between two groups and in consequence thereof, both the groups have filed complaint against each other. The learned counsel submits that in view of the same, the individual acts are required to be considered. Thus, considering the nature of the allegations as mentioned above, both the applicants are entitled to be released on bail. There is no criminal history. The applicants are having their roots in the society. They are easily available for trial. The

applicants are ready to abide the conditions, if imposed by this Court while enlarging them on bail including the condition, as not to enter in the village Dangewadi, Taluka Nilanga, District Latur till the conclusion of the trial.

5. The learned APP assisted by Ms. A. S. Jadhav holding for Mr. P. R. Katneshwarkar has strongly resisted the application on the ground that *prima facie* there is an evidence about formation of an unlawful assembly. The informant has specifically mentioned the name of the applicants armed with certain weapons. The learned APP submits that in terms of the provisions of Section 149 which speaks about the constructive liability, even though, if no role is ascribed to the applicants, they are liable for the act of the other members of the unlawful assembly. The learned APP submits that the offence is serious. There are two deaths. *Prima facie*, there is an evidence of homicidal deaths of two persons from the informant side. There is a strong possibility of tampering with the prosecution evidence, if the applicants are enlarged on bail. The applicants may not be released on bail.

6. On going through the allegations made in the complaint

and on perusal of the charge-sheet, though I find the names of the applicants are mentioned in the FIR, however, no specific role has been attributed to them. In respect of the incident occurred on 03.10.2019, the complaint came to be lodged on 04.10.2019, on the basis of which, the present crime came to be registered, however, the supplementary statement of the informant came to be recorded on 14.10.2019. The informant in his supplementary statement for the first time has ascribed certain role to the applicants and i.e. limited to the extent as an instigator. It is not disputed that there is a longstanding enmity between two groups on account of the dispute in respect of the agricultural land and the civil suit is also pending between the parties. In view of the same, the possibility of implicating each and every person from the other side cannot be ruled out. Furthermore, in respect of the incident occurred on the same date, time and place, co-accused Dnyanoba has also lodged the complaint against the present informant and eight others for having committed an offence under Sections 307, 149 etc. of the I.P.C. and on the basis of his complaint, Crime No.151 of 2019 came to be registered in the same police station. It appears that there was almost a free

fight between the members of two groups and as such the provisions of Section 149 are inapplicable. Thus, the individual acts of each and every persons are required to be considered. In the instant case, even if, the supplementary statement of the informant though recorded belatedly, considered to the extent of a specific role ascribed to these two applicants, however, it is also pertinent to note that the other injured witnesses have not even stated about the presence of the present two applicants at the time of the alleged incident. Thus, considering the nature of the allegations and the role ascribed to these two applicants as stated above, I am inclined to release both the applicants on bail. The applicant No.1 is working as a Labour in Manish Industries and applicant No.2 is a teacher in one primary school, having no criminal history. However, the possibility of tampering with the prosecution evidence cannot be ruled out, but that can be taken care by imposing conditions. It would be just and appropriate, if the entry of these two applicants is restricted in the village till the conclusion of the trial to avoid the possibility of tampering with the prosecution evidence. Hence, I proceed to pass the following order :

ORDER

1. The application is hereby allowed.
2. The applicant No.1. LAXMAN S/O. PANDU ONAME and applicant No.2. BALAJI S/O. PANDURANG ONAME in connection with Crime No.150 of 2019 registered with Shiruranantpal Police Station, District Latur for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 504 read with Section 34 of the I.P.C. and Section 135 of the Mumbai Police Act, be released on bail on furnishing PB. of Rs.20,000/- (Rupees Twenty Thousand only) each with one solvent surety of the like amount each on the following conditions :-
 - a] The applicants shall not tamper with the prosecution evidence in any manner.
 - b] The applicants shall not enter within the limits of village Dangewadi, Taluka Nilanga, District Latur till the conclusion of the trial.
3. Application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-