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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.980 OF 2020
with
CRIMINAL APPLICATION NO.2252/2020.

1) Rani Ravi Bhanuse
Age: 24 Yrs., occu. Household,

2) Babu Prakash Bhanuse,
Age: 50 Yrs., occu. Household,

Both R/o Akoli, Tq. Partur,
District Jalna.

= APPLICANTS

(Orig.Accused Nos. 3 & 4)

VERSUS

The State of Maharashtra
Through Police Station, Ashti,
District Jalna.

= RESPONDENT

Mr.SJ Salunke,Advocate for Applicant/s
Mr.VS Badakh,APP for Respondent-State;
Mr.SR Shirsat, Adv. To assist APP.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 8th December, 2020.

PER COURT:-

1. Criminal Application No.2252/2020 moved
to assist APP is allowed and disposed of.

2. Present application has been filed by
original accused Nos.3 and 4 under Section 439 of
Cr.P.C. as they are apprehending their arrest in
connection with CR No.153/2020 dated 2.9.2020

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registered with Ashti Police Station, Jalna for the offences punishable under Sections 302 and 109 of IPC.

3. Heard learned Advocates and learned APP for respective parties.

4. It has been vehemently submitted on behalf of the applicants that perusal of the FIR would show the allegations about instigation, i.e. at the most under Section 109 of IPC. However, though it is contended that present applicants used to instigate accused No.1, who is main accused and who committed murder of the deceased, it cannot be contemplated that he was bound by such statements that were allegedly made by the present applicants. The applicants are not even related to accused No.1. The informant appears to have implicated the present applicants with ulterior motive. Applicant No.2 has undergone heart-surgery and, therefore, on that count, anticipatory bail deserves to be granted to her. Further, applicant No.1 has delivered a female child on 27.9.2020. She also on that count deserves to be released on anticipatory

bail.

5. Per contra, learned APP strongly opposes the application and submitted that physical custody of the applicants is required as the offence is serious. The applicants used to instigate accused No.1 by saying that wife of accused No.1 had extra-marital affairs and her character is not good. Accused No.1 kept that anger in mind and assaulted his wife as well as daughter. So it is a double murder case and, therefore, physical custody of the applicants is required.

6. One Nagesh Solanke has lodged a report. His sister Jyoti was married to accused No.1 about ten years ago and they have son, aged 9 and daughter aged 7. He has contended that, when he, along with accused no.1, were proceeding at about 9.30 am on 1.9.2020 in bullock-cart, accused No.1 informed him that present applicants always tell him that Jyoti has some illicit relations and her character is not good. The informant told accused No.1 that they should talk in detail in the evening and, therefore, after they returned to the house at

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about 6.00 pm. they made enquiry with Jyoti. It was then decided that they should go to the house of present applicants on the next day and make enquiry with them. The informant further says that they went to the house of the present applicants at about 8.00 pm on 2.9.2020. At that time, husband of the applicant No.1 and the present applicants were present. From the side of the informant, he himself, his sister Jyoti, accused No.1, brother of accused No.1 – Gopal, wife of Gopal and mother, were present. It is contended that in presence of all these persons, applicant Nos.1 and 2 repeated the same thing about illicit relations of Jyoti and her character and it was also stated that the said fact was informed by them to accused No.1. The informant says that thereafter Jyoti went along with her husband on motor cycle. Informant went by walk at about 8.30 am to the house of his sister and it was found that many people had gathered and there was chaos. The door of the house was closed. It was opened with the help of other persons and when the informant went inside, he found, his sister and niece in pool of blood. Accused No.1 was present in the house. Jyoti and her daughter had

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received injuries with sharp weapon and blood was oozing from those injuries. Accused No.1 was abusing Jyoti. When the informant shifted them to hospital, they were declared dead.

7. The first and foremost fact that is required to be noted is that the alleged incident had taken place at a different place than the house of the present applicants. Whether the alleged information about making the allegation of illicit relations and assassinating and defaming somebody's character would amount to instigation to third person itself is a question. Even if for the sake of arguments, we accept that such false information would have been given by present applicants to accused No.1; yet it was for him to believe or not. He was married since ten years prior to the incident and had son aged 9 and daughter aged 7. In spite of such married life, if somebody says something about character of his wife, then whether it can be taken as instigation was the question posed and answer to that would be in negative.

8. Another fact to be noted is that when the

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informant himself, brother of accused No.1 and his family members were present, then when the allegations were made by the present applicants; yet the FIR is silent on the point of their reaction, so also the reaction from Jyoti. Thus, as the allegations in the FIR in respect of offence under Section 302 of IPC are specifically against accused No.1 and as regards the role of present applicants is concerned, already this Court has made the observations, as above. Further, taking into consideration the fact that the present applicants are ladies and since applicant No.1 has given birth to a child on 27.9.2020, both of them deserve to be released on anticipatory bail. Hence, following order, -

ORDER

- i. The Application stands allowed;
- ii. The order passed by this Court on 10th November, 2020, thereby granting interim relief to the applicants, is hereby confirmed and made absolute.
- iii. In the alternative, if the applicants are not arrested formally, in the event of arrest of the applicants in

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connection with CR No.153/2020 dated 2.9.2020, registered with Ashti Police Station, District Jalna, for the offences punishable under Sections 302 and 109 of IPC, they be released on PR and SB of Rs.15,000/- each.

iv. The applicants shall not tamper with the prosecution evidence in any manner; shall cooperate with the investigation.

(SMT. VIBHA KANKANWADI,J.)

BDV