

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

6 BAIL APPLICATION NO.1522 OF 2019
WITH
CRIMINAL APPLICATION NO.1777 OF 2020
IN BA NO.1522 OF 2019

1.DATTATRAYA NAMDEV BHADE
2. NANDU @ NANDKUMAR DATTATRAYA BHADE
3. VITTHAL NAMDEV BHADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Gaware Niteen V.
APP for Respondent-State : Mr. S. B. Narwade
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CORAM : V. K. JADHAV, J.
DATED : 13TH OCTOBER, 2020

PER COURT :-

1. The applicants in Bail Application No. 1522 of 2019 are seeking regular bail in connection with Crime No.812 of 2019 registered with Shrigonda Police Station, District Ahmednagar for the offence punishable under Sections 307, 326, 324, 143, 147, 148, 149, 436, 504, 506 and 302 of Indian Penal Code and also under Section 4/25 of the Arms

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Act. Their application with similar prayer bearing Criminal (Bail) M.A. No. 241 of 2019 came to be rejected by the learned Additional Sessions Judge, Shrigonda vide order dated 3.12.2019.

2. Learned counsel for the applicants submits that investigation is over and the charge-sheet has been submitted against the accused persons. The applicants are in jail in connection with the present crime from 18.11.2019. Learned counsel submits that though names of the applicants are mentioned in the FIR, however, allegations have been made mainly against co-accused Sharad and his wife Ranjana. There was a dispute in respect of the agricultural land between deceased Gorakh and co-accused Sharad, who happened to be the real brothers *inter se*. Learned counsel submits that in the FIR general allegations have been made, without referring names of the present applicants, to the effect that the other persons also set on fire the house of deceased Gorakh. Learned counsel submits that during the course of investigation, statement of Dropadabai was recorded. She is the mother of deceased
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Gorakh and co-accused Sharad. As per her statement, she has witnessed the actual incident. However, witness Dropadabai has also made allegations against co-accused Sharad and his wife Ranjana. She has stated in her statement that though she asked for help to the present applicants Vitthal Bhade and Dattatraya Bhade, they had not extended help. Learned counsel submits that even in the statement of the eye witnesses Swapnil @ Hanu Balasaheb Gore, Sachin Subhash Saikar, Ramdas Rajaram Chakane, Parshuram Namdeo Bhade and Tukaram Aba Raut, allegations have been made mainly against co-accused Sharad and his wife co-accused Ranjana. Learned counsel submits that even in the dying declarations of deceased Gorakh and deceased Surekha recorded belatedly, though they have taken names of the present applicants, the allegations have been made mainly against co-accused Sharad and co-accused Ranjana and it has been simply stated in their respective dying declarations that these applicants were also present there and they are also responsible for the incident. Learned counsel submits that

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applicants no.1 to 3 are from the brotherhood of the deceased so also co-accused Sharad. Learned counsel submits that on one occasion, applicant Nandkumar, on 01.06.2017, had lodged a complaint before the Police Inspector, Shrigonda Police Station, against deceased Gorakh in respect of some financial transaction between the father of the applicant Nandkumar and deceased Gorakh and threats being extended to the father of the applicant and the applicant Nandkumar himself on that count by deceased Gorakh. Learned counsel submits that the applicants are having a fixed place of residence. There is no criminal history. The applicants are ready to abide the conditions. The applicants may be released on bail

3. Learned APP has strongly resisted the application on the ground that names of the applicants are mentioned in the FIR and deceased Gorakh and deceased Surekha have stated about their presence at the spot at the time of the incident. Learned APP submits that even the other eye witnesses have also referred names of these applicants. Learned APP submits that in the dying declarations, vre/-

deceased Gorakh and deceased Surekha have specifically named the present applicants as the persons responsible for the incident along with co-accused Sharad and co-accused Ranjana. *Prima facie*, there is a strong case against the applicants. The applicants may not be released on bail. Learned APP has however fairly brought to the notice of this Court that the applicants are detected COVID positive in jail.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, though I find names of the applicants mentioned in the FIR, however, it appears that the allegations have been made mainly against co-accused Sharad and co-accused Ranjana. It has been alleged that co-accused Sharad along with his wife co-accused Ranjana threatened deceased Gorakh and his wife deceased Surekha and since deceased Gorakh did not open the door of his house, co-accused Sharad chained the door from outside. It has been further alleged that co-accused Sharad waited outside of the door holding an iron tommy and a *gupti* in his hands. Furthermore, it has been specifically alleged that co-accused Sharad set on fire the vre/-

residential house of deceased Gorakh and, as a result thereof, deceased Gorakh and his wife deceased Surekha came out of the house. It has been further alleged that co-accused Sharad and his wife co-accused Ranjana extended beating to them. It has been stated in the complaint, without referring specifically the names, that the other persons also set on fire the house and further extended beating to deceased Gorakh and deceased Surekha with fist and kick blows.

5. I have carefully perused the statement of witness Dropadabai. She is the mother of deceased Gorakh as well as co-accused Sharad. It appears that there is reference about the dispute in respect of the agricultural land between her two sons, namely, deceased Gorakh and co-accused Sharad. It further appears from her statement that she had witnessed the incident dated 28.08.2019. Witness Dropadabai has made allegations only against co-accused Sharad and his wife co-accused Ranjana. She has further referred in her statement that she had asked for help from applicants Vitthal

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and Dattatray who are her neighbours, however, they had not extended help. It further appears that even though she had witnessed the incident, she has not made any allegations against these applicants. I have carefully gone through the statements of each and every eye witness referred by the learned counsel in his submissions. I do not find that any of the witnesses have specifically made any allegations against these applicants. Though the incident had taken place on 28.08.2019, the dying declarations of deceased Gorakh and deceased Surekha came to be recorded on 06.09.2019 by the Special Executive Magistrate, Ahmednagar. Deceased Gorakh was having burns to the extent of 35.5%. On perusal of the dying declaration of deceased Gorakh, though I find that he has referred the names of these applicants, however, it has been stated in the dying declaration that at the time of setting his house on fire, the applicants were present there. However, without referring any overt acts, general statement has been made that these applicants helped co-accused Sharad in setting his house on fire. It has been further stated in the said dying declaration that all the accused persons

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including the applicants are responsible for the incident. In the dying declaration of deceased Surekha, she has made allegations mainly against co-accused Sharad. It has been stated in her dying declaration that co-accused Sharad set their house on fire and because of the burns, when deceased Gorakh and deceased Surekha made an attempt to come outside of the house, co-accused Sharad had given a blow of *gupti* on the head and back of deceased Gorakh. It has been further stated that co-accused Sharad was not allowing anybody to come near the house. Deceased Surekha has further made general statement in her dying declaration by referring names of these applicants along with other co-accused persons that they are responsible for the incident, without referring their individual acts. Thus, considering the nature of allegations and particularly considering the statements of the eye witnesses, including eye witness Dropadabai and further, the allegations made in the dying declarations as referred above, I am inclined to grant bail to all the applicants with certain conditions. Learned APP, at this stage, requested for restricting entry of these applicants

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in the village for a certain period to avoid possibility of tampering with the prosecution evidence. In view of the above, I proceed to pass the following order:

O R D E R

- I. The application is hereby allowed.
- II. The applicants 1.DATTATRAYA NAMDEV BHADE,
2. NANDU @ NANDKUMAR DATTATRAYA BHADE and
3. VITTHAL NAMDEV BHADE be released on bail in connection with Crime No.812 of 2019 registered with Shrigonda Police Station, District Ahmednagar for the offence punishable under Sections 307, 326, 324, 143, 147, 148, 149, 436, 504, 506 and 302 of Indian Penal Code and also under Section 4/25 of the Arms Act, on furnishing P.B. of Rs.20,000/- (Rs. Twenty Thousand) each with one solvent surety each of the like amount on the following conditions :-
 - a] The applicants shall not tamper with the prosecution evidence in any manner.

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b] The applicants 1.DATTATRAYA NAMDEV BHADE,
2. NANDU @ NANDKUMAR DATTATRAYA BHADE and
3. VITTHAL NAMDEV BHADE shall not enter within the
limits of village Shedgaon, Taluka Shrigonda, District
Ahmednagar for a period of six months from the date of this
order.

III. Application is accordingly disposed of.

6. It appears that as all the applicants found to be COVID
positive, application No.1777 of 2020 came to be filed for
temporary bail. The same also stands disposed off.

(V. K. JADHAV, J.)

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