

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

934 ANTICIPATORY BAIL APPLICATION NO.136 OF 2021

- 1) Gangadhar s/o Eknath Payghvan,
Age 51 years, Occ. Agriculture,
R/o. Aland, Tq. Phulambri
Dist. Aurangabad.
 - 2) Parmeshwar s/o Gangadhar Payghvan,
Age 26 years, Occ. Agriculture,
R/o. Aland, Tq. Phulambri
Dist. Aurangabad.
 - 3) Balu @ Krushna s/o Gangadhar Payghvan,
Age 22 years, Occ. Agriculture,
R/o. Aland, Tq. Phulambri
Dist. Aurangabad. ...Applicants
- Versus**
- The State of Maharashtra. ...Respondent
- ...
- Advocate for Applicants : Mr. Nilesh S. Ghanekar
APP for Respondent-State : Mrs. R.P. Gaur
- ...

CORAM : MANGESH S. PATIL, J.

DATE : 04 MARCH 2021

PER COURT :

The applicants are seeking bail in the event of their arrest in connection with Crime No.0018/2021 registered with Wadod Bazar Police Station, Tq. Phulambri Dist. Aurangabad for the offences punishable under Section 306, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

2. The applicant No.1 is the father of the other applicants. The

FIR has been lodged by the wife of the deceased. The deceased was distant cousin of the Applicant No.1. There was a long standing dispute on account of right of way to their fields. It is alleged that on the previous day of the incident, the applicants had assaulted the informant, her husband and even their minor son. Since thereafter, the deceased was under mental stress and committed suicide.

3. The learned Advocate for the applicants would submit that accepting the allegations in the FIR at their face value, there has been a long standing dispute between the two families on account of right of way. Though some incident is stated to have taken place on the previous day, wherein, the applicants allegedly assaulted the deceased, his wife and son, that would not constitute abetment within the meaning of Section 107 of the Indian Penal Code.

4. There are no criminal antecedents. The applicants are ready to co-operate the Investigating Officer. Nothing is to be discovered or recovered from them and the application may be allowed.

5. The learned A.P.P. opposes the application. She submits that the offence is serious. There is a suicide note, wherein the deceased specifically attributed the incident of the previous day as cause to commit suicide. He has also expressed that the applicants should be punished. There is a clear nexus between the incident of the earlier day and the suicide. Custodial interrogation of the applicants is

necessary and the application be rejected.

6. I have carefully gone through the papers of investigation.

7. Admittedly, there has been a long standing dispute between the two families on account of right of way. On the previous day, the applicants had allegedly assaulted the deceased, his wife-informant and their minor son. There is a statement of minor son corroborating this fact. It is also equally apparent from the FIR and the statement of that son as also the sister of the deceased that the latter was under severe mental stress after the episode of assault by the applicants. Accepting all these allegations as it is, all important necessary nexus between the death and the assault is absent. It cannot be assumed that by assaulting the deceased, the applicants were intending to instigate/drive him to commit suicide.

8. Considering the nature of the allegations and the offence allegedly committed by the applicants, their custodial interrogation does not seem to be imperative.

9. The application is allowed.

10. In the event of arrest of the applicants in connection with Crime No.0018/2021 registered with Wadod Bazar Police Station, Tq. Phulambri Dist. Aurangabad for the offences punishable under Section 306, 323, 504 and 506 read with Section 34 of the Indian Penal Code,

they shall be released on bail on their executing personal recognizance for an amount of Rs.20,000/- (Rupees twenty thousand) each and furnishing a solvent surety in the like amount each, subject to following conditions.

- (a) They shall attend the concerned Police Station as and when called by the Investigating Officer and shall co-operate him.
- (b) They shall not tamper the evidence or influence the witnesses.
- (c) They shall leave the village Aland, Tq. Phulambri, immediately and shall not re-enter therein, till filing of the charge-sheet.

(MANGESH S. PATIL, J.)

sarowar