

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

957 BAIL APPLICATION NO.513 OF 2021

1. Balaji Ramji Shinde

2. Tejabai Balaji Shinde

.. APPLICANTS

VERSUS

The State of Maharashtra.

..RESPONDENT

...

Mr.A.M.Gaikwad, Advocate for the applicants.

Mr.S.B.Narwade, APP for the respondent-State.

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CORAM: MANGESH S. PATIL, J.

DATE : 22.06.2021

P.C.

This is an application under Section 439 of the Criminal Procedure Code by two of the accused after filing of the charge sheet in Crime No.137/2020, registered with Osmannagar Police Station, District Nanded, for the offences punishable under section 302, 364, 143 of the IPC.

2] Briefly stated the allegations as can be appreciated from the copy of the charge sheet are to the effect that the deceased was working as an agricultural labourer with the applicants' family. A dispute had cropped up between

the two sides and he had stopped going to work. It is alleged that the applicants and their sons, who are co accused, were insisting him to work for some period pursuant to the contract. However, he was not turning up. It is alleged that he was abducted by two of the applicants' sons and subsequently he was done to death. He died of multiple injuries.

3] Learned Advocate for the applicants would point out that there are no eye witnesses. Two sons of the applicants were seen by the wife and mother of the deceased and other witnesses Prabhakar and Antaji having taken away the deceased on a motorcycle. He would further point out that though witness Pandurang has stated to have seen the deceased lying in an injured condition and the accused persons including the applicants were present nearby, the applicants cannot be attributed with the charge of murder merely because of their such presence. He would further submit that in spite of conclusion of the investigation, no material could be collected to *prima facie* reveal complicity of the applicants in commission of murder. The applicants are aged persons and unlikely to have indulged in any criminal activities as has been attributed to them though there are allegations and material against their sons. They are unlikely to jump the bail. The trial is also not likely to get over in the near future. They have been in jail for last more than 4 months and may be granted bail subject to usual conditions.

4] Learned APP opposes the application. He submits that the offences are serious and punishable upto death. The deceased was brutally assaulted and killed. It is the case of last seen together. There are several witnesses who have seen two of the applicants' son taking away the deceased soon before he was killed. There is a statement of the witness Pandurang, who is also a labourer, working in the field of the applicants. He has specifically mentioned that even the applicants were present when he went to the spot when the deceased was lying in an injured condition. He has stated that all the accused including the applicants were present there. He would further submit that a false story was sought to be made up. The deceased had jumped from the roof in order to escape. However, the applicants or their sons have not lodged any report. There was a strong *motive*. There is every possibility of the applicants influencing the witnesses and the application be rejected.

5] I have gone through the copy of the charge sheet. As has been pointed out by the learned Advocate for the applicants, there are no eye witnesses. The circumstances being relied upon by the prosecution are about the wife and the mother of the deceased having seen accused Pravin and Santosh taking away the deceased on their motor cycle. However, except the witness Pandurang who has stated about presence of the applicants along with their sons, who are co-

accused, present when the deceased was lying in an injured condition, there is no other circumstance to *prima facie* implicate the applicants.

6] Though there was some *motive* for the applicants to compel the deceased to resume his employment, at this juncture, there is not enough material to draw any inference that they were even intending to kill him.

7] Without indulging into any further scrutiny of the material, suffice for the purpose to observe that going by the material collected by the Investigating Officer annexed to the charge sheet, except the fact that the applicants were seen by witness Pandurang present by the side of the deceased when he was lying in an injured condition. There is no material to reveal complicity of the applicants in commission of the crime.

8] The applicants have been in jail for last 4 months. The trial is not likely to get over in the near future. Going by their age, they are unlikely to jump the bail, therefore, the applicants deserve to be released on bail.

9] The application is allowed. The applicants shall be released on bail on their executing personal recognizance for an amount of Rs.50,000/- [Rs. Fifty Thousand only] each and furnishing a solvent surety in the like amount, subject to the following conditions :

a] They shall shall not tamper the evidence or influence the witnesses.

b] They shall not try to contact the informant or witnesses and shall not influence them.

10] Bail before the trial Court.

[MANGESH S. PATIL, J.]

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