

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1346 OF 2020

WITH

CRIMINAL APPLICATION NO.2290 OF 2020

RUKHMINBAI W/O PRABHAKAR BABHALE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Choudhari, Advocate for applicants

Mr. N.T. Bhagat, APP for respondent

Mr. O.B. Boinwad, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th JANUARY, 2021.

ORDER :

1 Criminal Application No.2290 of 2020 moved for assist to PP is allowed and disposed of.

2 Present applicants have been arrested, in connection with Crime No.145/2020 dated 22.06.2020 registered with Hadgaon Police Station, Dist. Nanded, for the offence punishable under Section 307, 143, 147, 148, 149, 323, 324, 504, 506 of The Indian Penal Code, 1860. They have filed present application for bail under Section 439 of the Code of Criminal Procedure,

1973.

3 It has been submitted that there was a civil dispute between the family of the present applicants and the informant. Applicant No.1 is the widow of Prabhakar Tanaji Wabhale and applicant No.2 is their daughter. Informant is distantly related to them. Prabhakar was owner of land bearing Gat No.76 admeasuring 02 H 14 R. Informant's land is adjacent to the land of Prabhakar. Prabhakar had instituted Regular Civil Suit No.104/2009 for declaration of ownership and recovery of possession as well as mesne profits. The suit was decreed on 01.03.2018. Execution Petition bearing R.D. No.14/2018 was filed on 02.08.2018 for recovery of possession of the encroached portion of 08 R. Thus, the applicants are prosecuting their legal remedy to get the possession. Now, in order to raise hurdles the applicants are involved in false crime. Now, the investigation is over and charge sheet is filed. Therefore, the physical custody of the applicants is not required for the purpose of investigation. The applicants are ladies. Applicant No.2 is a young girl, and therefore, she cannot allowed to be in jail for longer period. The learned Advocate for the applicants, therefore, prayed for release of the applicants on bail.

4 Learned APP strongly opposed the application and submitted that there is ample evidence against the present applicants. Both the

applicants have assaulted deceased Ashok with iron sickle. The Post Mortem Report would show that he died due to head injury. There are corresponding injuries on the person of deceased Ashok. The informant and others have also been assaulted by the applicants and the sons of applicant No.1. The present applicants were absconding immediately after the commission of crime. Possibility of they getting absconding in future cannot be ruled out.

5 Since the investigation is over and charge sheet is filed, the further physical custody of the applicants is not required for the purpose of investigation. Now, it appears that the case is also committed to the Court of Sessions. Under such circumstance, it is required to be seen what is the evidence, that has been collected, against the present applicants. There are in all five accused persons. The three sons of the applicant No.1 are also the accused persons in this case. It has been contended in the First Information Report that there is common way to reach to the agricultural lands of accused as well as informant. When informant's brother Bandu and Gajanan were proceeding towards their field at about 8.30 a.m. on 21.06.2020, they were obstructed by the accused persons. In a way that the accused persons had laid thorns on the way. When the informant's brother Bandu and nephew Gajanan were removing those thorns, at that time, applicant No.1 came there and abused them. Accused Nitin assaulted with iron rod on the head of one

Raghoji. Present applicant No.1 assaulted Raghoji on the right hand with sickle. Thereafter, Ashok, who is also the another brother of informant and Avinash, rushed to the spot. At that time, accused Nitin assaulted Ashok on his head with iron rod, accused Tanaji assaulted him with Katti and present applicant No.1 gave blow on the forehead of Ashok with sickle, whereas applicant No.2 gave blow of sickle on the back side of the head of Ashok. All the relatives of the informant had sustained injuries. They were shifted to hospital, however, Ashok expired during treatment. Thus, it is to be noted that as regards the present applicants are concerned, it is stated that they have assaulted the deceased with sickle. One iron rod has been recovered upon the discovery by accused Nitin. That means, it is not at the behest of the present applicants. P.M. report shows that the deceased had sustained about 8 surface injuries, out of which four are abrasion and contusion, three injuries were stitched wounds and one was lacerated wound on the left side of the forehead. The probable cause of death is stated to be head injury. Whether independently the sickle on the left side of the forehead could have caused death, is a question. So also, as regards alleged blow given by applicant No.2 was on the back side of the head. However, the stitched wounds are on the parietal and frontal region, vertex, right parietal prominence vertically placed. Thus, there is nothing on the back side. There are statements of eye witnesses in support of the contents of the FIR. Thus,

taking into consideration the fact that the entire recovery is there, statements of witnesses have been recorded. The role attributed to the present applicants is different from the role attributed to the other accused persons. Under such circumstance, they deserve to be released on bail, however, with stringent conditions. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Rukhminbai w/o Prabhakar Babhale and 2) Priyanka d/o Prabhakar Babhale, who have been arrested, in connection with Crime No.145/2020 dated 22.06.2020 registered with Hadgaon Police Station, Dist. Nanded, for the offence punishable under Section 307, 143, 147, 148, 149, 323, 324, 504, 506 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution

is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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