

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 550/2021.

Mahadeo Lodaji Atote and others.

-VERSUS-

State of Maharashtra, through PSO Murtizapur (Gramin), District Akola.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.A. Dhawas, Advocate for Applicants.
Shri M. Khan, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 07, 2021.

Heard.

2. In anticipation of arrest in Crime 303/2021 registered with the non-applicant – Murtizapur (Gramin) Police Station, District Akola for the offence punishable under Sections 302, 143, 147, 148, 149 and 504 of the Indian Penal Code, applicants are praying for pre-arrest bail.

3. The State has resisted the bail by filing reply affidavit.

4. The case is having unique and peculiar facts. At the instance of report lodged by the daughter of deceased, namely

Pooja Dongre, the aforesaid crime came to be registered. Her report was on the basis of oral dying declaration made by her father deceased – Deepakraj Dongre. It is her contention that on 30.06.2021, she was called by her family members at Akola as her father Deepakraj was seriously injured. While Deepakraj was being shifted by ambulance to hospital, in the way he disclosed about the occurrence. The deceased informed that on the fateful day, he was called by applicants to their house. He asked applicants and son of applicant no.1 namely Dhammapal [another deceased], as to why he is bothering to his daughter. At that time, all applicants along with deceased Dhammapal assaulted him by means of sticks. In order to save his life deceased Deepakraj left the place. While he was running, he was caught hold by the villagers who again beat him by means of sticks in which he sustained grave injuries. The informant stated that after such disclosure, within short time her father Deepakraj died. The police had arrested 6-7 villagers in the crime.

5. Applicants on the other hand have other story to tell. It is their case that on the same day applicant no.3 had lodged a report against the deceased Deepakraj for causing death of

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Dhammapal. Pertinent to note that the first information report lodged by applicant no.3 Vinod was prior in time, then the existing first information report in which applicants are claiming pre-arrest bail.

6. Applicant no.3 Vinod alleged that on the date of occurrence, deceased Deepakraj along with his associates entered into his house and at the instance of rivalry, assaulted Dhammapal by means of sharp edged weapons and ran away. In the said assault Dhammapal succumbed to the injuries, which were of grave nature.

7. Applicant nos. 1 and 2 are husband and wife, having two children i.e. applicant no.3 Vinod and another son deceased Dhammapal. First marriage of Dhammapal did not run smoothly, hence, his wife was residing separately. Dhammapal had developed love relationship with daughter of deceased Deepakraj, which was not approved by Deepakraj and his family members. On the date of occurrence, Deepakraj came to applicants house and assaulted Dhammapal by means of weapon and while he was running from the place, the villagers caught him, mercilessly beaten, in which he died.

8. Thus, two rival versions have come up for

consideration. It can be assessed on prima facie basis only for the purpose of deciding the bail. It is categorically submitted by applicants that the informant Pooja, who was daughter of Deepakraj had fabricated a false story about the assault at the hands of applicants to Deepakraj. Investigation paper contains statements of some of the eye witnesses to the incident of beating took place on the road. The eye witnesses have stated that they saw that Deepakraj was running from the house of Dhammapal with deadly weapon, hence, villagers caught him, beated and done him to death. Pertinent to note that the informant has stated nothing as to how Dhammapal sustained injuries, in which he died.

9. The matter has one another twist, as another daughter of deceased Deepakraj namely "D" with whom Dhammapal has love affair had filed an application with the police which totally contradicts the story of the informant. She stated that her love relationship with Dhammapal was disliked by her father and other family members, therefore, her father and others had hatched conspiracy in which her father went to the house of applicants and killed Dhammapal. Moreover, she has filed such an affidavit before the trial Court. Of course, the

worth of her statement would be considered at the time of trial.

10. Prima facie it is evident from the material collected by the investigating officer that the entire incident of beating to Deepakraj happened in the village at the hands of several villagers who are already arrested. Applicants have made out a prima facie case to show that no such incident of assault to Deepakraj occurred at their house. Prima facie it is difficult to accept the informants' story because at the relevant time Dhammapal was assaulted by sharp edged weapon on such background, it is difficult to accept that applicants had also assaulted by sticks to Deepakraj. The entire foundation of the information regarding assault at the hands of applicants, appears to be doubtful. Needless to say that the above observations are on a prima facie basis, which have no impact on the merits of the trial. In that view of the matter, applicants have made out a case for grant of pre-arrest protection. Hence, following order is passed.

- (i) Criminal Application is allowed.
- (ii) In the event of arrest of applicants/accused (1) Mahadeo Lodaji Atote, (2) Sau. Indubai Mahadeo Atote and (3) Vinod Mahadeo Atote, in connection with Crime No.303/2021 registered with the non-

applicant – Murtizapur (Gramin) Police Station, District Akola for the offence punishable under Sections 302, 143, 147, 148, 149 and 504 of the Indian Penal Code, they be released on pre-arrest bail on their furnishing P.R. Bond in the sum of Rs.25,000/- each with one surety in the like amount.

- (iii) Applicants/accused shall attend the concerned police station on every Sunday in between 11 a.m. to 2 p.m. till the filing of charge sheet.
- (iv) Applicants/accused shall not tamper with the prosecution evidence in any manner.

JUDGE

Rgd.