

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1206 OF 2023

Bhimrao S/o Hanvata Miratkar ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. P. S. Agarwal, Advocate for the Applicant.

Mr. S. P. Sonpawale, APP, for the Respondent – State.

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 26, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 191 of 2020 registered with Basamba Police Station, Dist. Hingoli for the offences punishable under Sections 304, 325 read with Section 34 of the Indian Penal Code.

2. First informant is the wife of deceased. It is her contention that there was an agreement between her husband and Applicant for the sugarcane cutting. It is alleged that on 28.10.2020 Applicant came in tractor and insisted her husband to come along with them. When he refused to go with them, they caught hold of him. They lifted him and threw him in the trolley. Informant

and her children also got into said trolley. Thereafter on the next day at about 06.00 am, then went near Ambajoigai in the said tractor. At that time, she found that her husband not moving and that he sustained injuries. He was admitted in the hospital wherein it is found that he had sustained fracture injury to the spine. On 04.12.2020 husband of the informant died. Thereafter, offence punishable under Section 304 of IPC came to be added.

3. Learned Counsel for the Applicant submits that even if the statements made in the FIR are accepted as its, there was no intention of the Applicant to cause death of the deceased nor there was intention to cause bodily injury which is likely to cause death. Thus, it is his contention that it is not culpable homicide within the meaning of Section 299 of IPC. According to him, for the purpose of punishment under Section 304 IPC the culpable homicide is pre-requisite.

4. Learned APP opposed the application by submitting that the statement of informant coupled with the statement of witnesses indicates that when deceased

resisted to go along with Applicant, the Applicant and co-accused lifted him and thrown him into trolley of the tractor. It is submitted that the said act by itself is sufficient to show involvement of the Applicant in the crime.

5. There is no dispute about the fact that the Applicant never intended to cause death of the deceased. FIR indicates that there was an agreement entered into between the deceased and the Applicant and for that purpose deceased has received Rs. 1 lacs. In such circumstances, when the deceased has refused to accompany Applicant, he was lifted and thrown into the trolley by Applicant. The said act of the Applicant by itself is not justified, however, it is difficult at this stage to hold that the Applicant intended to cause death of deceased or had knowledge that by throwing deceased into the trolley, he could die. This is not the case wherein someone has been thrown from height in order to gather such knowledge. Apart from this, it is pertinent to note that the history given by medical officer is self fall by deceased himself. Thus, doubt is created about case of prosecution. Nothing is to be

recovered at the instance of present Applicant. There are no criminal antecedents against Applicant.

6. In view of above, application stands allowed by confirming interim order dated 27th July, 2023.

(R.M. JOSHI, J.)

Malani