



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

932 BAIL APPLICATION NO. 1417 OF 2024

1. Yashwant Manohar Devkate
2. Sonerao Manohar DevkateApplicants

VERSUS

The State of MaharashtraRespondent

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Mrs. A. A. Lomte, Advocate for Applicants.

Mr. A. A. A. Khan, APP for the State.

CORAM : S. G. MEHARE, J.

DATE : 6th SEPTEMBER, 2024.

PER COURT :

1. Heard learned counsel for the Applicants and learned APP for the State.

2. Applicants seek bail in Crime No. 0165/2024 registered with Parali Rural Police Station, District Beed, for the offences punishable under Sections 302, 323, 143, 147, 149 of the Indian Penal Code.

3. The prosecution has a case that co-accused Rekha called deceased to her field. He went there. He was administered poison.

He made a phone call to the first informant. The first informant and two others went there. They saw the deceased was lying on the spot and one insecticide bottle was also lying beside him. They tried to awake him but he did not respond. Then he was taken to the hospital. That time, he was unconscious. So he was taken to the higher Center. He regained his sense. He gave the oral dying declaration against the Applicants and other co-accused. The incident happened on 30.05.2024 and the deceased died on 05.06.2024.

4. Learned counsel for the Applicants would submit that both the Applicants are not the residents of village Karbetwadi. They are residents of different districts. They have been arraigned as accused only being relatives of the co-accused Rekha. The recovery of weapon at the instance of the Applicants is also shown incorrectly. The police never tried to record the statement of the deceased. It was possible for the Investigating Officer to collect the material evidence. Report was lodged belatedly. The theory of the oral dying declaration is silent about the date and time. The police must be visiting the police station regularly. At no point of time, the informant narrated the incident narrated to him by the deceased, to

the police. Therefore, it raises a serious doubt about the oral dying declaration. There are no antecedents to the discredit of the Applicants. They are young boys of 20 and 25 years. Hence, they may be granted bail.

5. Learned APP has strongly opposed the Application. He would submit that immediately after the incident the first informant and two others reached on the spot as they had received a phone call of the deceased. The deceased was immediately shifted to the hospital. The medical papers show that the deceased regained his sense and he was conscious. So, the case of oral dying declaration cannot be doubted. Prima facie, evidence is against the Applicants. Investigation is in progress. The offence is serious. Hence, they may not be granted bail.

6. Perused the papers. There appears substance in the submission of learned counsel for the Applicants that the first informant had no reason to silent till the deceased died. He had an occasion to narrate the oral dying declaration to the police. The police could have recorded his statement. Prosecution has no evidence to show that the Investigating Officer, at any time, tried to

record the statement of the deceased. At this juncture, it can be said that the oral dying declaration to the first informant is a balanced evidence. Nothing is to be recovered from the Applicants. They are young boys. Hence, they deserve bail. Hence, the following order :-

ORDER

- (i) Bail application is allowed.
- (ii) Applicants Yashwant Manohar Devkate and Sonerao Manohar Devkate be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- each (Rs. Fifty Thousand only) with one solvent surety each of the like amount in connection with Crime No. 0165/2024 for the above offences with following conditions :-
 - (a) They shall not tamper with the prosecution witnesses.
 - (b) They shall attend the police station as and when called on written notice, till conclusion of the trial.

(S. G. MEHARE)
Judge