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

CRIMINAL APPLICATION NO. 139 OF 2016

1. Sundar s/o Vishwanath Pawar,
2. Datta s/o Sundar Pawar,
3. Kailash s/o Rambhau Chavan ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr S.J. Salunke, Advocate for applicants;
Mr K.D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 5th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants are seeking their release on pre-arrest bail, in connection with C.R. No.119 of 2015, registered with police station, Shiradhon, Taluka Kallam, District Osmanabad, for offence punishable under section 379 read with section 34 of the Indian Penal Code.

2. The incident is alleged to have taken place on 5th November, 2015, for which the first information report came to be lodged on 9th November, 2015.

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3. The prosecution story against the applicants is that they have stolen fodder from the field of the complainant and transported the same in a tractor.

4. Learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge that applicant no.1 is a retired government employee, whereas applicant no.2 is a practicing Advocate. It is claimed that the applicants are falsely implicated in the crime in question on the ground that applicant no.2, a Lawyer by profession, had initiated proceedings under section 156 (3) of the Code of Criminal Procedure against the police officials. In addition, it is submitted that the claim of the complainant as regards theft of fodder is *prima facie* false as the 7/12 extract, in relation to the land owned by the complainant, does not depict cultivation of jowar crop by the complainant during the relevant period, as is claimed by him. Apart therefrom, learned Counsel would urge that one of the employees of applicants no.1 and 2 was already arrested and in view of *ad interim* protection ordered by the learned Court below, the applicants have attended the police station. According to him, the applicants are respectable persons in the society and allegations about theft of fodder from the field of the complainant are baseless.

5. Learned Addl. Public Prosecutor opposed the application on the ground that while conducting proceedings under section 165 of the Code of Criminal Procedure, fodder was seized from the field of applicant no.1. It is further claimed that custodial interrogation of the applicants is very much

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necessary, as there is *prima facie* evidence and eye-witness to the incident in question.

6. Perused the investigation papers.

7. It is really difficult for the Investigating Officer to identify seized fodder, to have been stolen from the land belonging to the complainant. However, it is required to be noted that the plea raised by the applicants about non cultivation of fodder appears to be probable, as the revenue record in relation to the land belonging to the complainant does not depict that jowar crop was cultivated by him, during the relevant period, in his field.

8. In that view of the matter, the applicants who have respect for law and having regard to their status in the society, in my opinion, there is hardly any likelihood of they running away from the process of investigation. Thus, the applicants are entitled to be released on pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.119 of 2015, registered with police station, Shiradhon, Taluka Kallam, District Osmanabad, for offence punishable under section 379 read with section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

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Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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