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

CRIMINAL APPLICATION NO.166 OF 2016

1. Ashok s/o Rangnath Khandagale ,
2. Ushabai w/o Rangnath Khandagale ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr Suvidh S. Kulkarni, Advocate for applicants;
Mr S.J. Salgare, Addl. Public Prosecutor for respondent;
Mr C.R. Thorat, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 4th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants seek their release on pre-arrest bail, in connection with C.R. No.408 of 2015, registered with police station, Satara, Dist. Aurangabad, for offences punishable under sections 307, 302 read with section 34 of the Indian Penal Code.

2. Applicant no.1 is the husband of complainant Sonali, to whom she had married about three years back. Applicant no.1 and Sonali are blessed with two children; one is aged about two years and another about six months.

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3. Applicant no.2 Ushabai is mother-in-law of deceased Sonali, i.e. mother of applicant no.1 Ashok.

4. The third accused Rangnath is already arrested in the crime in question.

5. The incident is alleged to have taken place on 17th December, 2015, for which the crime came to be registered on 19th December, 2015.

6. The first dying declaration of the complainant – victim came to be recorded by police on 18th December, 2015 and on the same day her second dying declaration came to be recorded by the Executive Magistrate. Victim Sonali succumbed to burn injuries on 23rd December, 2015.

7. In the above background, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge two fold contentions; (a) that the investigation is at advanced stage. All the material which is claimed to have been used in commission of the crime is already seized from the scene of the offence. Accused Rangnath was already subjected to custodial interrogation and applicant no.1 Ashok has suffered burn injuries while trying to extinguish fire, for which he is under treatment and (b) that perusal of the material on record depicts commission of suicide by the victim Sonali and applicant no.2 Ushabai, mother-in-law of deceased Sonali, is not involved in commission

(3)

of the crime in question, particularly looking at her age and the ailment of Cancer from which she is suffering. Apart therefrom, learned Counsel submits that, in the above background applicant no.2 Ushabai is entitled to be released on bail, in view of proviso to section 437 of the Code of Criminal Procedure.

8. Learned Addl. Public Prosecutor, who is assisted by learned Counsel appearing on behalf of the complainant, would strenuously urge that there are two dying declarations, which specifically name applicant no.1 Ashok to have involved in commission of the crime in question. Apart therefrom, he would urge that there are eye-witnesses to the incident and the investigation till date depicts *prima facie* involvement of the accused. He would then urge that the application of applicant no.1 Ashok is required to be rejected, as his custodial interrogation is very much necessary.

9. With the assistance, I have perused the papers placed on record along with the application and the investigation papers.

10. So far as applicant no.2 Ushabai is concerned, it is not in dispute that her age is 55 years. Applicant no.1 married to Sonali and was blessed with two children; the younger one is just six months old. The father-in-law Rangnath is already behind bars in the present matter. It is not disputed that applicant no.2 Ushabai is taking treatment for Cancer.

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11. The dying declaration does not ascribe specific role to applicant no.2 Ushbai. As such, in my opinion, applicant no.2 Ushabai is entitled for protection.

12. So far as applicant no.1 Ashok is concerned, it is required to be noted that though he is named in both the dying declarations; dying declaration recorded by the police depicts that on account of quarrel between Sonali and the other accused persons, he has set Sonali on fire. The second dying declaration recorded by the Executive Magistrate speaks of the role attributed to all the applicants.

13. It is not in dispute, rather a part of investigation papers that applicant no.1 Ashok has suffered burn injuries while trying to extinguish fire suffered by Sonali.

14. Taking over all impact of the investigation and the situation as is narrated herein above, in my opinion, there is likelihood that applicant no.1 Ashok is falsely implicated in the offence. Apart therefrom, the fact remains that applicant no.1 Ashok is also under treatment for burn injuries suffered by him.

15. In the light of above discussion, in my opinion, it will be appropriate to order release of the applicants on pre-arrest bail. I, therefore, pass following order :-

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In the event of arrest of the applicants, in connection with C.R. No.408 of 2015, registered with police station, Satara, Dist. Aurangabad, for offences punishable under sections 307, 302 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.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj