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

CRIMINAL APPLICATION NO. 509 OF 2016

1. Lata w/o Balasaheb Shinde,
2. Rahul s/o Balasaheb Shinde ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr Kunal Kale, Advocate for applicants;
Mr S.P. Deshmukh, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 22nd February, 2016

ORDER :

By the present application under section 439 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.I-115 of 2014, registered with Shrirampur police station, Dist. Ahmednagar, (now Sessions Case No.29 of 2015, pending on the file of Additional Sessions Judge, Kopargaon), for offences punishable under sections 302, 504 read with section 34 of the Indian Penal Code.

2. The case of the prosecution is that applicant no.1 is the mother of applicant no.2. It is claimed that applicants no.1 and 2, with an intention to commit murder of Rajendra Shinde, have pushed him in a well. The rivalry alleged by the prosecution is based on the strained relations between applicants and deceased Rajendra Shinde, on account of

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competition in cultivation and fertility of land.

3. While trying to make out a case for grant of bail, learned Counsel appearing on behalf of the applicants would urge that the case is based on circumstantial evidence. He would then invite my attention to the spot panchnama, which according to him depicts depth of the well as 45 ft. and water level of 25 ft. He has specifically invited attention of this Court to the material, such as, a white bag and an empty plastic drum floating on water of the well in which deceased is alleged to have been pushed and was later on stoned, which has resulted into fracture of frontal bone and left temporal bone. The cause of death shown in the post mortem report is due to head injury and drowning.

4. According to the learned Counsel for the applicants, fact remains that the well in question is not a constructed one, in a sense, there was no protection wall above the ground level and as such, accidental fall of deceased Rajendra in the well cannot be ruled out. He would then urge that the only evidence available against the applicants is by way of statements of Ashok Aher and Paraji Aher, which according to him are improbable narration. It is submitted by the learned Counsel that the incident in question took place on 6th December, 2014, whereas the statements of the said witnesses were recorded on 9th December, 2014, though these witnesses claimed to have tried to save deceased from drowning. He would submit that in order to implicate the applicants in the crime in question, improbable story is narrated against them.

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5. Learned Addl. Public Prosecutor submits that even if it is presumed that the case is based on circumstantial evidence, there is strong evidence available against the applicants about their involvement in the offence. He has taken me through the post mortem report and the statements of the witnesses, who were threatened by the applicants when the said witnesses have tried to save deceased Rajendra from drowning.

6. Having bestowed my thought to the submissions made, it is required to be noted that deceased Rajendra went to his field along with the articles which are found inside the well, i.e. empty plastic drum and a bag, which perhaps may be containing the material for spraying or used as conditioner for plants. The fact remains that the well in question in which deceased Rajendra has died, having suffered a head injury, is without any protection wall and it is open up to ground level. The fact confirmed in the investigation as against the applicants that they have pushed deceased Rajendra inside the well appears to be improbable, particularly when the material, such as, empty plastic drum and white bag were found floating on water.

7. Apart from above, what is narrated by witnesses Ashok Aher and Paraji Aher is that they were threatened to leave the place of the incident, however, they are not claiming that they are the eye-witnesses to the incident. In my opinion, entire case is based on circumstantial evidence.

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8. Apart from unexplained delay of three days in lodging the first information report, the witness Ashok claimed to have tried to save deceased with the help of drip tube when he was swimming. The head injury can also be caused by fall on the side walls of the well. Alleged claim of phone call by Ashok to brother Bhikaji calling rope from home to save deceased is also not investigated.

9. In the above referred background and having regard to the fact that the investigation in the matter is complete and charge-sheet is also filed, further detention of the applicants, based on circumstantial evidence, will be unjustified. Thus, it will be appropriate to enlarge the applicants on bail. I, therefore, pass following order :-

The applicants be released on bail, in connection with C.R. No.I-115 of 2014, registered with Shrirampur police station, Dist. Ahmednagar, (now Sessions Case No.29 of 2015, pending on the file of Additional Sessions Judge, Kopergaon), for offences punishable under sections 302, 504 read with section 34 of the Indian Penal Code, 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.)

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