

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

CRIMINAL APPLICATION NO.637 OF 2016

1. Ganesh s/o Sakharam Surwase,
Age 28 years, Occu. Agri.,
2. Kavita w/o Ganesh Surwase,
Age 20 years, Occu. Household

All R/o Shivani (B), Taluka Ausa,
District Latur

.. Applicants

Versus

- . The State of Maharashtra,
through its Ausa Police Station,
Taluka Ausa, District Latur

..Respondent

Mr S.P. Urgunde, Advocate for applicants
Mr S.J. Salgare, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 9th February 2016

PER COURT

Heard.

2. The applicants are seeking regular bail in Crime No.69 of 2015, registered at Ausa Police Station, District Latur for the offence punishable under Section 302 read with sec.34 of Indian Penal Code, for the alleged incident dated 4th June 2015 for which report came to be lodged on 11th June 2015.

3. Learned Counsel for the applicants would urge that apart from delay, the entire case is based on the testimony of eye witness i.e. Malhari, a child witness.

4. According to Mr Urgunde, there is unexplained delay and the testimony of child witness need not be considered at this stage, particularly having regard to the age of witness Malhari, which is about 4 to 5 years.

5. He would then urge that the detention of the applicants is not necessary as the investigation in the matter is complete.

6. Learned A.P.P. opposed the application on the ground that there is strong prima facie evidence against the applicants. He has not disputed that the applicant No.2 is blessed with an issue in jail. According to him, the application be rejected, particularly having regard to the nature of evidence available against the applicant.

7. So far as the case of applicant No.1 - Ganesh is concerned, there appears to be dispute prior in point of time in between the deceased and applicant No.1. So far as applicant No.2 is concerned, she is second wife of applicant No.1, who is admittedly blessed with a child in the jail. The case against the present applicants is based on the evidence of child witness, Malhari.

8. In this background, in my opinion, it is only applicant No.2 - Kavita is entitled for bail in view of proviso to Section 437 of Cr.P.C.

9. As such, the application of applicant No.1 - Ganesh stands rejected.

10. So far as applicant No.2 – Kavita is concerned, she be released on bail in Crime No. 69 of 2015, registered at AUSA Police Station, District Latur, for the offence punishable under Section 302 read with sec.34 of Indian Penal Code, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

11. Criminal Application stands allowed to the extent of applicant No.2 – Kavita in above terms.

(N.W. SAMBRE, J.)

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