

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

Criminal Application No. 6610 of 2015

District : Latur

Ahmedkhan s/o. Amirkhan Pathan,
 Age : 49 years,
 Occupation : Mason,
 R/o. India Nagar, Latur,
 District : Latur.

.. Applicant
 (Original
 complainant)

versus

1. The State of Maharashtra,
 Through Police Inspector,
 Police Station, Renapur,
 Taluka : Renapur,
 District : Latur.
2. Salim s/o. Hamidkhan Pathan,
 Age : 28 years,
 Occupation : Labourer.
3. Fakir @ Farukh s/o. Haimdkhan
 Pathan,
 Age : 33 years,
 Occupation : Labourer.
4. Nasimabee w/o. Hamidkhan
 Pathan,
 Age : 65 years,
 Occupation : Housewife.

Nos.2 to 4 All R/o.
 Mali Galli, Patel Chowk,
 Latur,
 Taluka & District : Latur.

.. Respondents
 (Nos.2 to 4 -
 Original accused)

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*Ms. Poonam V. Bodke Patil, Advocate, for
the applicant.*

*Mr. S.Y. Mahajan, Addl. Public Prosecutor, for
respondent no.1.*

*Mr. T.M. Venjane, Advocate, holding for
Mr. S.P. Urgunde, Advocate, for respondent
nos.2 to 4.*

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With

Criminal Application No. 842 of 2016

District : Latur

The State of Maharashtra,
Through the Police Station,
Renapur, Taluka : Renapur,
District : Latur.

.. Applicant
(Original respondent)

versus

1. Salman s/o. Hamidkhan Pathan,
Age : 28 years,
Occupation : Labour.

2. Fakir @ Farukh s/o. Hamidkhan
Pathan,
Age : 32 years,
Occupation : Labour.

3. Nasimabee w/o. Hamidkhan Pathan,
Age : 65 years,
Occupation : Household.

All R/o. Male Galli,
Patel Chowk, Latur,
Taluka & District : Latur.

.. Respondents
(Original applicants)

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*Mr. S.Y. Mahajan, Addl. Public Prosecutor, for
the applicant.*

*Mr. T.M. Venjane, Advocate, holding for
Mr. S.P. Urgunde, Advocate, for respondent
nos.1 to 3.*

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CORAM : N.W. SAMBRE, J.

DATE : 17TH JUNE 2016

ORAL ORDER :

Heard the learned Counsel for respective parties.

2. Criminal Application No. 6610 of 2015 is preferred by the original complainant seeking cancellation of pre-arrest bail granted to respondent nos.2 to 4 therein, in connection with Crime No. 132/2015, registered at Police Station, Renapur, District Latur, for offences punishable under Sections 302, 201, 120-B, read with Section 34 of the Indian Penal Code, vide order dated 27-10-2015, in Criminal Misc. Application (Bail) No. 370/2015, passed by the learned Addl. Sessions Judge, Latur.

3. Criminal Application No. 842 of 2016 is preferred by the State seeking cancellation of pre-arrest bail granted to respondent nos.1 to 3 therein, in connection with the same crime.

4. As both the Criminal Applications seek the same relief, both are heard and decided together by this common order.

5. On October 16, 2013, deceased Imam was riding in auto-rickshaw bearing registration No. MH-24/F-2809, which was driven by Salman, his cousin. They were accompanied by two passengers, namely, Marjina Shaikh and Archana Bansode.

6. After travel for some time, deceased Imam disclosed his intention to drive auto-rickshaw and as such, got down from the auto-rickshaw from its right side. In the process, Imam was hit by a speedy truck which came from behind. As such, Imam lost his life because of serious injuries suffered by him. The investigation depicts that his left leg was totally separated from body. An offence came to be registered against the truck driver, being Crime No. 126/2013, for offences punishable under Sections 304A, 279, 338, 427 of the Indian Penal Code, read with Section 184 of the Motor Vehicles Act, 1988.

7. The father of deceased Imam expressed his apprehension that he was murdered as there was a dispute between the respondents - accused and him in

relation to landed property and as such, filed an application under Section 156(3) of the Code of Criminal Procedure, 1973, resulting into registration of an offence.

8. The respondents - accused, as such, approached the learned Sessions Judge, Latur, vide Cri. Misc. Application No. 370/2015, claiming pre-arrest bail in connection with Crime No. 132/2015, registered at Police Station, Renapur, for offences punishable under Sections 302, 201, 120-B, read with Section 34 of the Indian Penal Code. The learned Addl. Sessions Judge, Latur, vide order dated October 27, 2015, based on the investigation as was carried out, including that of the report of the Resident Doctor, Forensic Department, General Hospital, Latur, ordered release of the respondents herein - accused on pre-arrest bail on the ground that the injuries suffered by the deceased Imam were not caused by any assault but were caused by accident only.

9. The order dated 27th October 2015, granting pre-arrest bail in favour of the respondents - accused is sought to be assailed and the pre-arrest bail is sought to be cancelled on the ground that on merit, the respondents - accused were not entitled for bail.

10. The bone of contention of the learned Counsel for the applicant - original complainant and the learned Addl. Public Prosecutor for the applicant - State is that once there was an enquiry under Section 156(3) of the Code of Criminal Procedure, 1973, ordered by the learned Magistrate, the same is based on the appreciation of material that was brought before the Magistrate and in such an eventuality, the learned Sessions Court should have slow in granting pre-arrest bail. According to the learned Counsel for the applicant - original complainant, if the overall view of the matter is analyzed, the only inference that could be drawn in favour of the prosecution is that due to dispute between the complainant and the respondents - accused, complainant's son Imam was murdered by the respondents - accused. The learned Counsel for the original complainant then urged that certain lacunae could be noticed during the investigation carried out in the first round of investigation which has resulted into registration of Crime No. 126/2013 which speaks about the very casual conduct of the Investigating Officer.

11. On the above grounds, the pre-arrest bail granted to the respondents - accused is sought to be cancelled.

12. Mr. Venjane, the learned Counsel for the respondents - accused, submits that the respondents - accused were granted pre-arrest bail way back on October 27, 2015, and the offence as is claimed was committed some three years. According to him, if required, the respondents - accused will face the prosecution. However, the cancellation of pre-arrest bail is not warranted in the present case as the Court below has given cogent reasons while exercising the discretion vested in it.

13. Having bestowed my thoughts to the submissions made and having perused the investigation papers, it is required to be noted that in the subsequent round of investigation in the present matter, two eye witnesses to the incident of accident, namely, Archana Bansode and Marjina Shaikh, in their statement recorded on November 9, 2015, in clear terms speak that Imam was not murdered by anybody but he died due to the accident. The statement of these two witnesses speaks that Imam was occupying rear seat of the auto-rickshaw on the right side and after travelling for some time, Imam expressed his desire to drive the auto-rickshaw. As such, Imam got down from the auto-rickshaw from right side and in the process, he was immediately hit and crushed over by speedy truck, resulting into cutting of his left leg and separated from the main body.

14. Apart from the above, other investigation, as is carried out after the order of the learned Magistrate, does not directly implicate the present respondents - accused of an active participation in the commission of the alleged crime punishable under Section 302 of the Indian Penal Code.

15. In this background, in my opinion, the discretion as is exercised by the learned Addl. Sessions Judge, thereby ordering release of the respondents - accused on pre-arrest bail vide order dated October 27, 2015, does not call for any interference, much less, for cancellation of pre-arrest bail.

16. In the light of above, both the Applications fail and the same are dismissed.

(N.W. SAMBRE)
JUDGE

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