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

CRIMINAL APPLICATION NO.1781 OF 2016

Jeevan s/o Madhusing Charwande ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr N.S. Ghanekar, Advocate for applicant;
Mr A.R. Kale, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 13th April, 2016

ORAL ORDER :

By the present application under section 439 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with C.R. No.I-104 of 2015, registered with Gangapur police station, for offences punishable under sections 302, 143, 147, 148 and 149 of the Indian Penal Code.

2. The earlier bail application of the present petitioner was withdrawn. However, the present application is filed after completion of investigation and submission of the charge-sheet.

3. Apart from raising a ground of parity with that of the other accused, namely, Bhagwn s/o Kisan Charwande, who is released on regular by this

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Court by an order dated 14th March, 2016, passed in Criminal Application No.856 of 2016, Mr Ghanekar; learned Counsel appearing on behalf of the applicant invites attention of this Court to the statement of the Police Patil, spot panchnama and other evidence so as to form an opinion that initially the case that was brought to the notice of the investigating agency was that of suicide and not murder. He would then submit that presuming the case of the prosecution based on the allegations to be correct, still according to him, involvement of the present applicant particularly in the background of allegations made against him appears to be improbable. According to him, in the first information report, Ushabai, the wife of deceased Shyamsing has attributed role to the present applicant as that of a person sitting on the tree along with one Shantilal, to which the body of Shyamsing was found to be hanging. It is claimed that there were in all nine accused, of which seven were on the ground and two were on the tree.

4. Learned Counsel then would urge that the applicant is entitled to be released on bail on the ground that there are criminal no antecedents against the applicant, investigation in the matter is complete, charge-sheet is filed and improbability of involvement of the applicant in the crime in question.

5. So as to substantiate his contentions, learned Counsel has taken me through the story narrated in the first information report, statement of Nannusing Rajput – the Police Patil of village and the statement of other witness, namely, Gokul, who claim to have brought down the body of the

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deceased.

6. Learned Addl. Public Prosecutor, while opposing the application would submit that the complainant Ushabai is an eye witness to the incident, particularly in the matter of stating presence of the applicant on the spot when she had seen the body of her husband hanging to a tree and the applicant was sitting on the said tree. He then would submit that as in all nine accused are involved in the crime, the resistance, if any, by deceased Shyamsing while committing the crime in question, will hardly be of any consequence and as such no injuries are noticed on the body of deceased. He would then submit that the other injuries as are noticed were found to be 24 hours old.

7. In the above background, if the investigation papers as are placed on record are analyzed, the applicant was shown to have been present on the spot and was sitting on the branch of the tree to which deceased was shown to be hanging. It is claimed by the complainant that she witnessed the incident in light of torch. When she witnessed the incident, at that moment she had not noticed any activity on the part of the applicant in the crime in question. Apart therefrom, this Court must take a note of the fact that in the morning hours there was a dispute between deceased and present applicant and his group and said dispute was settled by the parties outside the police station upon intervention of the Police Patil. In view of above history of dispute, which was in relation to right of way, false implication of the applicant cannot be ruled out. The story as is sought to

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be espoused by the learned Addl. Public Prosecutor that the applicant was instrumental in hanging the deceased also appears to be improbable, particularly when the complainant had not attributed any role but for his presence at the scene of the offence.

8. The fact remains that the investigation in the matter is complete and charge-sheet is also filed. There are no criminal antecedents against the applicant. The other similarly placed accused are already released on bail. As such, further custodial detention of the applicant, in my opinion, is not necessary particularly in the background of not having noticed any strong *prima facie* case against the applicant.

9. In view thereof, I pass following order :-

The applicant be released on bail, in connection with C.R. No.I-104 of 2015, registered with Gangapur police station, for offences punishable under sections 302, 143, 147, 148 and 149 of the Indian Penal Code, on furnishing P.R. Bond of Rs.25,000/- with one surety for the like amount.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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