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

CRIMINAL APPLICATION NO. 2029 OF 2016

1. Hameed Baig Chand Baig Mirza
2. Dastagir Baig Chand Baig Mirza ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr P. S. Paranjape, Advocate for applicants;
Mr A. R. Kale, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 25th April, 2016

ORAL ORDER :

The applicants, who are accused Nos. 1 and 4 are seeking their release on pre-arrest bail, in Crime No. 79 of 2016, for the alleged incident dated 2nd March, 2016, registered on 3rd March, 2016 with Shirpur City Police Station, Dist. Dhule, for offences punishable under Sections 304(II), 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard Mr Paranjape, learned Counsel appearing on behalf of the applicants. He would invite my attention to the fact that, there is delay of a day in lodging first information report, which was not explained. He would then submit that there were indifferences between complainant and accused persons due to certain outstanding payments and in this background, false implication of the applicants cannot be ruled out.

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3. Apart from above, deceased Iqbal Shaikh Ibrahim, aged about 65 years is claimed to be known to the present applicants. The deceased Iqbal was hospitalized for heart surgery and present applicants, who were in good terms with him, have visited hospital and as such, it is really hard to digest the story of prosecution that the applicants have assaulted deceased Iqbal on his chest. Apart from above, he would submit that, even if the prosecution story is presumed to be correct, still the claim that because of assault by the present applicants, the deceased suffered heart attack and died, cannot be even recognized in medical science.

4. Learned Additional Public Prosecutor, while opposing bail application would submit that there are eye witnesses to the incident in question, who speak of the assault by all the 4 accused persons to deceased Iqbal on his chest.

5. Learned Additional Public Prosecutor then would urge that the eye witnesses, in clear terms have named the present applicants as accused and have narrated specific role attributed to accused persons. He would then submit that in view of seriousness of crime in question, bail application be rejected.

6. Perused the entire investigation papers. The cause of death, as is stated in the post-mortem report speaks of death due to ischaemic heart attack. It is then required to be noted that the deceased Iqbal had

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undergone heart surgery and perhaps was discharged from the hospital, sometime on 6th September, 2015, as is reflected from the certificate to that effect issued by the doctors. Further references in the post-mortem depicts that apart from abrasion on nose, there is no external injury to deceased Iqbal.

7. It is really hard to believe that, the applicants who were admittedly in good terms with deceased Iqbal and have visited the hospital for his enquiry would have assaulted him, particularly in the background of narration of earlier incident for payment of outstanding by the complainant.

8. Looking to the investigation, as is carried out further, the eye witnesses have stated that the applicants have assaulted deceased Iqbal, however, the cause of death cannot be co-related with the assault by applicants, particularly in the background of the cause, as is cited in the post-mortem report.

9. In view of above, in my opinion, custodial interrogation of the applicants is not necessary. There are no criminal antecedents against the present applicants and they will be very much available for investigation.

10. In the above background, the applicants are entitled for their release on pre-arrest bail. Hence I pass following order :-

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In the event of arrest, the applicants be released on bail, in connection with Crime No. 79 of 2016, registered with Shirpur City Police Station, Dist. Dhule, for offences punishable under Sections 304(II), 323, 504, 506 read with Section 34 of the Indian Penal Code, upon each of them furnishing P. R. Bond of Rs. 25,000/-, with one surety in the like amount.

Till filing of chargesheet, the applicants shall keep themselves away from the jurisdiction of the concerned police station.

The applicants shall attend the concerned police station on 29th and 30th April, 2016, between 10.00 a.m. and 12.00 noon and thereafter as and when called by the investigating officer.

11. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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