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

CRIMINAL APPLICATION NO. 310 OF 2016

Hanuman Ramdas Phad,
Age: 42 years, Occu: Agril.,
R/o. Dhabewadi, Tal: Gangakhed,
Dist. : Parbhani

..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station, Pimpaldari,
Tal: Gangakhed, Dist. : Parbhani

..RESPONDENT

Mr Ravi R. Bangar, Advocate holding for Mr S. G. Kawade, Advocate for
applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent

WITH

CRIMINAL APPLICATION NO. 2526 OF 2016

Uttam s/o Dnyanoba Phad,
Age: 63 years, Occu: Retired Teacher,
R/o. Village Dhabewadi, Taluka: Gangakhed,
Dist. : Parbhani, at present residing at
Lecturer Colony, Gangakhed,
Taluka: Gangakhed, District : Parbhani

..APPLICANT

VERSUS

The State of Maharashtra,
Through the Police Sub Inspector,
Local Crime Branch, Parbhani

..RESPONDENT

Mr R. S. Deshmukh, Advocate for applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 11th August, 2016

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ORAL ORDER :

By these applications under section 439 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.12 of 2015, registered with police station, Pimpaldari, Tq. Gangakhed, Dist. Parbhani, for offences punishable under sections 302, 201, 143, 147, 148, 149, 109, 114 read with section 34 of the Indian Penal Code.

2. The prosecution case, from the statement given by the complainant Marotrao on 24th February, 2015, is that his son Ganesh was an eye-witness to the incident of murder, which has resulted into Sessions Trial No.29 of 2010, in which Madhukar and Keshav were the deceased. The son of Marotrao, namely, Ganesh, who was eye-witness in the said trial was murdered so as to take revenge and to avoid conviction of accused persons in the said trial.

3. Learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of bail, would submit that the investigation in the matter is already over and the charge-sheet is filed. According to them, both the applicants are behind bars since last more than one year.

4. So far as the role attributed to applicant Uttam is concerned, though eye-witnesses Arjun, Subhash, Ashruba and Ramprasad claim personal presence, still the only role attributed is that of instigation.

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5. So far as the role attributed to other accused persons, namely, Hanuman Ramdas Phad is concerned, on suspicion the complainant has named him as an accused, who is claimed to have hatched a conspiracy with the other accused persons so as to eliminate Ganesh.

6. So far as applicant Hanuman is concerned, it is brought to my notice that the case is entirely based on circumstantial evidence.

7. Mr Shinde, learned Addl. Public Prosecutor would strenuously oppose the application on the ground that if the applicants are released, there is every likelihood of disturbance of law and order in the village, as already there are two murders committed *qua* the background as is narrated in the foregoing paragraphs.

8. Learned Addl. Public Prosecutor has taken me through the contents of the charge-sheet, particularly, statements of the eye-witnesses and the statement of complainant Marotrao, so as to prevail upon this Court that there is strong material available against the applicants, which according to him, prompts rejection of the applications.

9. Upon perusal of the statements of eye-witness Arjun and other three eye-witnesses, it is required to be noted that it is specifically mentioned in their statements that there was a commotion on the spot and having noticed the same, the said eye-witnesses went to the spot and saw that

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applicant Uttam and other accused persons were actively assaulting deceased Ganesh, resulting into his death. It is also claimed in their statements that there are many other persons, who were instigating. If the said statements are taken to their plain meaning, an inference that could be drawn *qua* the role attributed to applicant Uttam was of physical presence and not of active participation in the crime in question.

10. Apart from above, it is also required to be taken into account that the accused Uttam is of advanced age and is also ailing. There are no criminal antecedents or history, which prompts this Court to refuse bail, particularly when the investigation in the matter is already over.

11. So far as applicant Hanuman is concerned, but for his reference in the complaint dated 24th February, 2015 filed by Marotrao, the father of deceased Ganesh, there is hardly any material to connect him to the crime in question, particularly his active involvement *qua* murder of Ganesh.

12. The conspiracy angle as is sought to be espoused by the learned Addl. Public Prosecutor is that Ganesh was witness in Sessions Trial, in which the relatives of the applicants were murdered and it is only with an intention to take revenge, the applicants have assaulted deceased Ganesh.

13. It is to be inferred from the investigation papers that so far as the aspect of conspiracy is concerned, but for CDR of mobile, there is no other

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material to infer that applicant Hanuman has conspired or prima facie involved in the crime in question, so as to prompt his detention. The evidence available against applicant Hanuman is circumstantial in nature.

14. In view thereof, in my opinion, the applicants deserve to be released on bail.

15. Looking to the history of the crimes, particularly as is sought to be relied upon by the prosecution, in the present scenario, in my opinion, it will be appropriate to impose certain stringent condition on the applicants. I, therefore, pass following order :-

The applicants be released on bail, in connection with C.R. No.12 of 2015, registered with police station, Pimpaldari, Tq. Gangakhed, Dist. Parbhani, for offences punishable under sections 302, 201, 143, 147, 148, 149, 109, 114 read with section 34 of the Indian Penal Code, on furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

The applicants shall not enter the jurisdiction of Taluka Gangakhed till conclusion of the trial, save and except for attending the trial.

Criminal Applications stand allowed in above terms.

(N.W. SAMBRE, J.)

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