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

CRIMINAL APPLICATION NO. 2644 OF 2016

1. Kalyan Shivram Pawar,
2. Baban @ Khulya Kalyan Pawar ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Ms Suvarna Wadkar, Advocate for applicants;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2016

ORAL ORDER :

By the present application under section 439 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.128 of 2015, registered with Washi police station, Washi, Taluka Washi, District Osmanabad, for offences punishable under sections 302, 147, 148, 149 and 504 of the Indian Penal Code.

2. It is required to be taken note of the fact that there are in all five accused in the crime in question, who are family members. The complainant Rama Pawar also belongs to the family of the applicants and happens to be the cousin.

(2)

3. The prosecution story as against the applicants is that on 15th July, 2015, all the accused persons came in front of the house of deceased Rustum Pawar and started abusing his family members on the ground that his livestock has destroyed soyabean crop of the applicants.

4. It is then claimed that when Rustum came out of the house, present applicant Kalyan has assaulted on his head with a stick, whereas applicant Baban has assaulted Rustum by stick on his face. The cause of death of Rustum as is apparent from the post mortem report is head injury, which is attributed to applicant Kalyan.

5. In the above background, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of bail submits that, but for the applicants, all accused persons are released on bail. She would then urge that it was not the intention of the accused to commit the crime in question, as they did not run away from the spot but were arrested from their house. It is out of provocation caused by Rustum, the applicants have assaulted him. Accordingly, she submits that the applicants are entitled to be released on bail. According to her, since the charge-sheet is already filed, further detention of the applicants is not warranted.

6. Learned Addl. Public Prosecutor opposed the application on the ground that the applicants are history-sheeters and although they are released on bail in earlier offences, yet this Court should reject the present application, in view of statements of eye-witnesses and other evidence available on record.

(3)

7. With the assistance, I have scanned the charge-sheet. It is noted that the cause of death of Rustum as is apparent from the post mortem report is head injury. Applicant no.1 Kalyan, as is apparent from the contents of the first information report has given blow of stick on the head of Rustum resulting into his death. If the cumulative effect of the allegations in the first information report and conduct of the accused persons in the crime in question is taken into account, it appears that all family members, have suffered loss to their economy for entire season because of destruction of soyabean crop by livestock belonging to Rustum. It is then to be noted that the role attributed to applicant Kalyan and his son Baban is giving one blow each of stick on head and face of Rustum. If the same is tested in the light of the provisions of sections 299 and 304 of the Indian Penal Code, in my opinion, the applicants could be given benefit thereunder. From the conduct of the applicants it does not appear that they intended to kill Rustum, as single blow of stick was given.

8. In view thereof, in my opinion, application needs to be allowed. I, therefore, pass following order :-

The applicants be released on bail, in connection with C.R. No.128 of 2015, registered with Washi police station, Washi, Taluka Washi, District Osmanabad, for offences punishable under sections 302, 147, 148, 149 and 504 of the Indian Penal Code, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(4)

The applicants shall not tamper with the prosecution witnesses or evidence.

The observations made above are *prima facie* in nature.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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