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

CRIMINAL APPLICATION NO.2678 OF 2016

1. Abdul Rashid Haji s/o Abdul Karim,
2. Mohammad Farukh s/o Abdul Rashid,
3. Mohammad Umar s/o Abdul Rashid ..APPLICANTS

VERSUS

The State of Maharashtra & anr. ..RESPONDENTS

Mr R.S. Deshmukh, Advocate for applicants;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 15th June, 2016

ORAL ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants seek their release on pre-arrest bail, in connection with C.R. No.125 of 2016, registered with Cantonment (Chhavani) police station, Aurangabad, for an offence punishable under section 394 of the Indian Penal Code.

2. The incident is alleged to have taken place on 3rd April, 2016, for which the first information report came to be lodged on 5th April, 2016.

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3. It is the case of the prosecution that the applicants threw chilly powder in the eyes of the complainant, assaulted him and took away an amount of Rs.5,900/- from his pocket.

4. It is claimed that while committing the offence, the applicants have used bullet motorcycle bearing registration No.MH 20 4441.

5. Mr Deshmukh, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge that the motorcycle in question is not owned by the present applicants but is owned by somebody else as is apparent from the document to that effect received from the Regional Transport Office, Aurangabad. It is also not a bullet motorcycle. According to him, the entire story is concocted as applicant no.1 got married with erstwhile wife of the present complainant. Thus, he prayed to allow the application.

6. Learned Addl. Public Prosecutor opposed the application on the ground that the amount and motorcycle are required to be recovered from the applicants.

7. Perused the investigation papers. Though it is claimed by the complainant that he was taken to the Government Hospital, there is no first information report *qua* medico legal case. There is delay of two days in lodging the first information report which is not explained.

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8. The bike in question as is rightly stated by Mr Deshmukh is not a bullet motorcycle, but some other bike as is apparent from the documents produced on record.

9. It is claimed by the applicants that that there was no assault but for throwing chilly powder, however, the investigation papers speak of the complainant suffering an injury by hard and blunt object on his lumbar region.

10. In the above background, *prima facie*, the involvement of the applicants in the crime in question appears to be improbable. It is only because the complainant claims that present applicant no.1 had initially illicit relations with his wife with whom he subsequently got married, has resulted into lodging of the complaint.

11. In view thereof, in my opinion, it will be appropriate to enlarge the applicants on pre-arrest bail. Hence, following order :-

In the event of arrest of the applicants, in connection with C.R. No.125 of 2016, registered with Cantonment (Chhavani) police station, Aurangabad, for an offence punishable under section 394 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

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As the applicants have already attended the police station, I do not see any necessity to direct further attendance, but for as and when required by the Investigating Officer, who shall issue appropriate notice for the same.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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