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

CRIMINAL APPLICATION NO.3363 OF 2016

1. Khemchand s/o Raising Phule,
2. Datta s/o Khemchand Phule,
3. Sadashiv s/o Khemchand Phule ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr N.S. Ghanekar, Advocate holding for Mr Rupesh A. Jaiswal, Advocate for applicants;

Mr S.Y. Mahajan, Addl. Public Prosecutor for respondent;

Mr K.G. Patil, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 5th July, 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.I-80 of 2016, registered with Sillod Police Station, Sillod, Dist. Aurangabad, for an offence punishable under section 302 read with section 34 of the Indian Penal Code.

2. Complainant Ramchandra alleged that accused Datta, while driving Tata Sumo vehicle on the night of 9th May, 2016, intentionally gave dash to the bike which was driven by his son Ramesh and nephew Deepak and thereafter the persons travelling in the vehicle have murdered them. The motive for alleged murder is claimed to be the money lending transaction

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between the complainant and the applicants. It is claimed that the transaction was of 2008 and since the complainant had not repaid the said amount, the applicants have committed murder of his son and nephew.

3. While trying to make out a case for grant of pre-arrest bail, Mr Ghanekar, learned Counsel appearing on behalf of the applicants would submit that of the six witnesses, whose statements are recorded by the Investigating Officer, eye-witnesses Samadhan and Ramesh, in front of whose house the incident of accident has occurred, have claimed that the driver of the vehicle, i.e. Dattu was driving it in a rash and negligent manner and gave dash to the bike coming from opposite side by driving the vehicle on wrong side, resulting into death. He would submit that the vehicle owner, namely, Rameshwar has stated that the vehicle was driven by accused Dattu, who is already arrested and released on regular bail. Learned Counsel then would invite my attention to the medical evidence and that of CDR reports of the alleged eye-witnesses, namely, Dattu and Ganesh, so as to submit that Dattu and Ganesh were not the eye-witnesses to the incident of murder, but they are inserted with an intention to falsely implicate the applicants herein, in the crime in question. He would then submit that the medical evidence also does not speak of any injury by assault or caused by weapon.

4. Learned Addl. Public Prosecutor, assisted by learned Counsel Mr Patil, would submit that the investigation depicts *prima facie* involvement of the applicants in the crime in question. They have placed much reliance

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upon the act of Dattu in not responding to the phone calls of the owner of the vehicle, namely, Rameshwar, just before the incident of accident. Learned Addl. Public Prosecutor submits that it is an incriminating circumstance and the prosecution story is supported by the statements of eye-witnesses, namely, Ganesh and Dattu, which speaks of an assault. According to him, enmity between the parties is a motive that could be attributed to the applicants for commission of the crime in question.

5. With the assistance, I have perused the report dated 2nd June, 2016 submitted by the Investigating Officer A.P.I., police station, Sillod (Rural) and the statements of the eye-witnesses to the incident in question, namely, Samadhan and Ramesh.

6. It is noted from narration of the contents in the first information report, that it is lodged after a period of two days, without explaining the delay in lodging the same. Apart therefrom, the two eye-witnesses, namely, Samadhan and Ramesh, who appear to be natural witnesses, residing opposite to the place of the incident, have not attributed any role to the applicant, much less a role of assaulting the deceased. The medical evidence also does not support the case of the complainant that the deceased were assaulted by the applicants with weapons, i.e. iron rod and tommy. It is then required to be noted that the CDR report of the phone calls of the so called eye-witnesses Ganesh and Dattu speaks of presence of the said witnesses at the venue of the marriage and there is no movement of the said witnesses.

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7. The motive as is attributed, i.e. money lending transaction of 2008, in my opinion, is a stale incident and in the background of the investigation carried out so far, there is hardly any material to infer *prima facie* involvement of the applicants in the crime in question.

8. In view of above, in my opinion, it will be appropriate to allow the application, I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.I-80 of 2016, registered with Sillod Police Station, Sillod, Dist. Aurangabad, for an offence punishable under section 302 read with section 34 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.

The applicants shall attend the concerned police station on 12th and 13th July, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

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

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj