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

CRIMINAL APPLICATION NO. 3501 OF 2016

1. Ayub s/o Bashir Pathan

2. Aslam s/o Ayub Pathan ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr T. M. Venjane, Advocate for applicants;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 27th July, 2016

ORDER :

This is an application under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. After investigation in the matter is complete, the applicant is charge sheeted in the Crime No. 48 of 2015 registered with Udgir City Police Station, District Latur, for the alleged incident dated 08/04/2015, for the offence punishable under Sections 302, 326, 143, 144, 147, 148, 149, 109, 506, 324 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. The prosecution story as against the present applicants is, one Jubedabi w/o Yusuf Pathan lodged the first information report on

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08/04/2015 alleging that the present applicants alongwith other accused persons on 08/04/2015 at about 11-00 a.m. visited her house and had given death threats to her husband Yusuf Pathan, who at the relevant time, was not present in the house. It is then claimed that all the accused persons climbed her house and removed tin sheets, which were used for ceiling.

4. It is then claimed that at about 8-00 p.m. her nephew Ajroddin was informed by one Moulavi that her husband Yusuf was assaulted and was hospitalized in Life Care Hospital at Udgir.

5. In the above referred background, Mr. Venjane, learned Counsel for the applicants, while trying to make a case for grant of bail, would urge that co-accused Balan @ Balekhan Pathan and Arfat Pathan, who are involved in the crime in question, have confessed the guilt before the police, which reflects from the statement of Police Constable Tukaram Trimbak Balade. In addition, he would submit that so-called witness, namely, Shaikh Amer Shaikh Isak, a pan shop owner speaks involvement of only two accused persons in the crime in question. He would then submit that so far as present applicants are concerned, they were named as accused, as they were part of the crime in question. As the charge-sheet is filed and investigation in the matter is complete, no further detention of the applicants is required.

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6. Mr Shinde, learned Additional Public Prosecutor opposed the application on the ground that both the incident i.e. in the morning and in the evening are in continuation and the applicant's involvement is to be inferred in the crime that took place in the morning. He would then submit that the role attributed to the applicants can be inferred from the material available on record and prayed for rejection.

7. Prima facie, it is required to be noted that the statement of the eye witness to the incident, namely, Shaikh Amer Shaikh Isak, a pan shop owner speaks of involvement of two persons in the crime in question. Police Constable Tukaram speaks of surrender by co-accused Balan @ Balekhan Pathan and Arfat Pathan, and confessed their involvement in crime in question. In addition to above, it is required to be noted that the applicants are made named in the incident took place in the morning i.e. removal of tin shed of complainant's house.

8. Apart from above there are hardly any incriminating circumstances to connect the applicants with crime in question.

9. In the above background, in my opinion, application needs to be allowed. Hence, I pass following order :

(i) The applicants be released on bail, in connection with Crime No. 48 of 2015 registered with Udgir City Police Station, District Latur, for the offence punishable under Sections 302, 326, 143, 144, 147, 148, 149, 109, 506, 324 of the Indian Penal Code and under Section 135 of the

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Bombay Police Act, upon executing P.R. bond of Rs.15,000/- with one surety in the like amount.

(ii) The applicants shall attend the trial regularly till its conclusion and shall not prolong the trial.

Criminal Application is allowed in above terms.

(N.W. SAMBRE, J.)

sjk