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

CRIMINAL APPLICATION NO.5361 OF 2015

Sulubai w/o Gulabrao Magar ..APPLICANT

VERSUS

The State of Maharashtra & ors. ..RESPONDENTS

Mr S.J. Salunke, Advocate for applicant;
Mr S.M. Ganachari, Addl. Public Prosecutor for respondent no.1;
Mr S.S. Rathi, Advocate for respondents no.2 to 5

CORAM : N.W. SAMBRE, J.

DATE : 27th January, 2016

ORDER :

By this application under section 439 (2) of the Code of Criminal Procedure, the applicant – complainant seeks cancellation of pre-arrest bail granted to respondents no.2 to 5, by order dated 26th August, 2015, passed by Extra Jt. Ad hoc Additional Sessions Judge, Parbhani, in Criminal Misc. Application No.520 of 2015.

2. Mr Salunke, learned Counsel appearing on behalf of the applicant – complainant, would urge that respondents no.2 to 5 ought not to have been released by the learned Additional Sessions Judge, when their earlier application being Criminal Misc. Application No.371 of 2015 seeking grant of pre-arrest bail was rejected. In addition, learned Counsel would urge that in view of political rivalry between deceased and respondents no.2 to 5, suspicion pointed out towards involvement of respondents no.2 to 5 in commission of murder of the victim, should have resulted into custodial interrogation and not by granting them pre-arrest bail. In addition, by

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relying upon the judgment of the Apex Court, in the matter of the **State of Maharashtra vs. Captain Buddhikota Subha Rao**, reported in **AIR 1989 SC 2292**, learned Counsel would urge that between the two orders; one rejecting the application and second granting bail under section 438 of the Code of Criminal Procedure, there was hardly any change in the circumstances. He has relied upon the observations of the Apex Court in para 7 of the said judgment.

3. Pursuant to the orders of this Court, the Investigating Officer is personally present in the Court and has assisted the learned Addl. Public Prosecutor.

4. I have perused the entire investigation papers.

5. It is noted that the inquest, the spot panchnama and post mortem report speak that the death was because of cutting of body on the railway track.

6. The post mortem report does not speak of any other injuries than the one caused because of the railway accident in question.

7. Apart from above, the Investigating Officer, pursuant to the complaint lodged by the nephew of the victim, has investigated the angle of the present respondents no.2 to 5, being suspects in commission of the crime in question, in view of the alleged political rivalry narrated, however, nothing incriminating could be noticed or gathered as against respondents no.2 to 5 during the investigation.

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8. Apart from above, it is noted that the first application under section 438 of the Code of Criminal Procedure, being Criminal Misc. Application No.371 of 2015, was rejected by the learned Additional Sessions Judge, on the ground that respondents no.2 to 5 have not responded to notice of appearance for inquiry, issued under section 175 of the Code of Criminal Procedure against them. It appears that respondents no.2 to 5 thereafter appeared before the Investigating Officer and investigation in the matter was carried out. It is upon their appearance and further investigation, respondents no.2 to 5 have moved second application, being Criminal Misc. Application No.520 of 2015, which came to be allowed by an order dated 26th August, 2015. The material difference that could be noted from the investigation papers between the dates of these two orders is, role of respondents no.2 to 5 as suspects was investigated into by the Investigating Officer and nothing incriminating could be noticed against them.

9. In the light of above, in my opinion, no case for exercising powers under section 439 (2) of the Code of Criminal Procedure, for cancellation of bail, is made out, so as to curtail liberty of respondents no.2 to 5 herein. Thus, the Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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