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

CRIMINAL APPLICATION NO.5641 OF 2016

Vithal s/o Kondiba Bansode,
Age: 35 years, Occ: Labour,
R/o. Village Kausadi, Tq. Jintur,
Dist. Parbhani. ..APPLICANT

VERSUS

The State of Maharashtra,
through its Police Inspector,
Police Station Selu, Tq. Selu,
Dist. Parbhani. ..RESPONDENT

Mr M.M. Chaudhari, Advocate for applicant;
Mr A.D. Namde, Addl. Public Prosecutor for
respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 23rd NOVEMBER, 2016

ORAL ORDER :

The applicant, who has been arrested on 22nd April, 2016 in connection with Crime No.99 of 2016 registered at Selu Police Station, District Parbhani for offences punishable under Sections 302, 120(B), 201 read with Section 34 of the Indian Penal Code, seeks his release on bail.

2. As per report dated 12th April, 2016

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lodged by Prabhakar, his father Ramkishan had been to his field for sleeping on previous night. The informant had been to village Rava, Taluka Selu at about 9-30 p.m. and returned at about 11-30 p.m. on the same day. On the next morning, he learnt that his father was lying dead with some injuries. On that basis, offence was registered against unknown person. After due investigation, the charge sheet came to be filed against three accused of which present applicant is accused no. 3.

3. It is submitted by learned Counsel for the applicant that as per statement of Sopan Jadhav, who is alleged to be eye witness, the murder of said Ramkishan was committed by accused nos. 1 and 2 and said witness has merely referred to the presence of present applicant. He submitted that no overt act is alleged to have been committed by present applicant. Only on the basis of statement made by co-accused, the present applicant has been implicated. He has also referred to the seizure of the stone at the instance of accused No.2.

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4. The application is opposed by learned Additional Public Prosecutor. He has referred to the statement of Ravi Dabhade and has contended that since beginning the present applicant was involved in the present crime. He has referred to the post mortem report to indicate the nature of injuries suffered by deceased. He has also referred to the statement of Police Inspector Nitin Khandagale to urge that present applicant had absconded while other two accused had been arrested.

5. Perused the charge sheet as well as statements of witnesses. While considering the application for release on bail, *prima facie* view of the involvement of the applicant will have to be taken into consideration. The version of eye witness — Sopan Jadhav indicates that present applicant along with other two accused and deceased had liquor together, at which point of time, the accused no. 2 had lifted a stone and hit it on the

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head of Ramkishan. On account of head injuries, Ramkishan succumbed to death. His version further indicates that the applicant was present at the site but he had not committed any overt act. His further statement indicates that the stone which was used in the commission of crime was thereafter collected by accused no.2. Hence this statement of eye witness-Sopan Jadhav is not helpful to the prosecution insofar as present applicant is concerned. As regards statement of Ravi Dabhade is concerned, he states that it was Sarjerao who had paid amount of Rs.2000/- to the said witness for obtaining poison. Sarjerao had come along with present applicant for the said purpose.

6. Considering the fact that the eye witness to the alleged offence does not allege overt act of the applicant and the stone in question has been seized at the instance of accused no. 2, I find that the applicant has made out a case for his release on bail.

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7. In view of aforesaid, the applicant shall be released on bail, in connection with Crime No. 99 of 2016 registered at Selu Police Station, District Parbhani for offences punishable under Sections 302, 120(B), 201 read with Section 34 of the Indian Penal Code, on his furnishing P.R. bond of Rs. 15,000/- with one surety in the like amount.

The applicant shall attend the Court of Sessions Judge, Parbhani on 10th of every month or as per the directions of the learned Sessions Judge.

The applicant shall not take any steps to tamper with the material collected by the prosecution.

8. It is clarified that the observations made in this order are only for the purpose of considering present bail application.

9. Criminal Application is allowed on above

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terms and same is disposed of.

10. *Hamdast* is permitted.

(A.S. CHANDURKAR, J.)

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