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

CRIMINAL APPLICATION NO. 5923 OF 2016

1. Rausaheb S/o Narayan Bhosle,
Age: 45 years, Occu: Agri.,
R/o Bhamthana, Tq. Shirampur,
Dist. Ahmednagar

2. Bhausahab S/o Narayan Bhosle,
Age: 60 years, Occu: Agri.,
R/o Bhamthana, Tq. Shirampur,
Dist. Ahmednagar

..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr V. R. Dhorde, Advocate for applicants;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 20th December, 2016

ORAL ORDER :

The applicants, who have been arrested pursuant to C.R. No.I-100 of 2015, registered at Veergaon police station, Tq. Vaijapur, Dist. Aurangabad, for offences punishable under Sections 302, 504, 143, 147, 148 and 149 of the Indian Penal Code, seek their release on bail.

2. As per the first information report dated 17th September, 2015, the informant has reported that field Gat No.192 had been purchased in the name of his wife in April, 2014. While taking possession of said land the family of Annasaheb Bhosale were causing obstruction. Said land was

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being cultivated by his relative Ramesh Chabukswar. On 17th September, 2015, during sowing operations, said Annasaheb Bhosale and his other family members obstructed Ramesh Chabukswar and assaulted him. It was learnt that in said assault by sticks, rods and axe, said Ramesh Chabukswar expired. On that basis, aforesaid crime came to be registered. Applicant no.1 was arrested on 19th December, 2015, while applicant no.2 was arrested on 22nd September, 2015.

3. It is submitted by the learned Counsel for the applicants that in the first information report there is no specific overt act attributed to any of the applicants. As per the statement of one Babasaheb Wayal, assault by means of stick has been attributed to applicant no.1 Rausaheb. Reference is also made to his supplementary statement in that regard. It is submitted that in the statement recorded under Section 164 of the Code of Criminal Procedure vague reference has been made to acts of various accused persons while stating that present applicants were not holding any weapons. It was then submitted that a test identification parade was held insofar as applicant no.1 was concerned. There was no test identification parade insofar as applicant no.2 is concerned. There were no recoveries effected from any of the applicants. Reference was made to the orders passed by this Court with regard to other accused persons who had been enlarged on bail. It was also pointed out that present applicants had moved Criminal Application No.1315 of 2016, but the same was withdrawn on 14th March, 2016 with liberty to file a fresh application, if the trial was not concluded within a period of six months from said date. On these grounds

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it was submitted that applicants deserve to be released on bail.

4. The application is opposed by learned Addl. Public Prosecutor by relying upon the police papers as well as the charge-sheet. It is submitted that as per the version of the witness Babasaheb Wayal, applicants were present when the assault on Ramesh Chabukswar took place. It was pointed out that provisions of Section 149 of the Indian Penal Code have also been invoked and, therefore, present applicants did not deserve to be enlarged on bail. Reference was made to the post mortem report to submit that there were various injuries on the body of the deceased and, therefore, present application was liable to be rejected.

5. I have perused the charge-sheet as well as statements of witnesses recorded. It can be seen that in the statement of Babasaheb Wayal the assault by stick is attributed to the applicant no.1 Rausaheb. There is no reference to any overt act by applicant no.2 Bhausahab. The post mortem report indicates the cause of death as on account of haemorrhagic shock due to multiple incised wounds. It is to be noted that the test identification parade was conducted only insofar as applicant no.1 Rausaheb is concerned and the same was not conducted for the applicant no.2. The assault by the axe is attributed to the other accused. It is to be noted that in the bail applications filed by accused nos.2, 3 and 4 this Court has released them on bail. The charge-sheet has been filed on 19th December, 2015. Present applicants are behind bars for more than one year.

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Though it was submitted on behalf of the learned Addl. Public Prosecutor that applicant no.1 Rausaheb had some antecedents, it is pointed out that applicant no.1 has been acquitted in Sessions Case Nos.40 of 2006 and 41 of 2006. Hence, this aspect cannot be a ground for not granting bail to applicant no.1.

6. In view of aforesaid, I am inclined to allow the present application.

The applicants, who have been arrested in connection with Crime no.I-100 of 2015 registered at Veergaon Police Station, Tq. Vaijapur, Dist. Aurangabad for the offences punishable under Sections 302, 504, 143, 147, 148 and 149 of the Indian Penal Code, are directed to be released on bail, on each of them furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

- (i) They shall attend the Court of learned Sessions Judge, Vaijapur, District – Aurangabad on 10/01/2017 and thereafter as per the directions of the Sessions Court.
- (ii) They shall not take any steps to influence the prosecution witnesses.
- (iii) By clarifying that the observations made in this order are only for deciding the bail Application, the same is allowed and disposed of.

(A.S. CHANDURKAR, J.)

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