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

CRIMINAL APPLICATION NO. 6415 OF 2015

1. Rangrao s/o Shyamrao Babatkar,
2. Sheshrao @ Pintu Shyamrao Babatkar,
3. Krishna @ Babu s/o Marotrao Shinde ..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr J.M. Murkute, Advocate for applicants;
Mr S.J. Salgare, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 11th February, 2016

ORDER :

By this application under section 439 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.63 of 2014, registered with Mahur police station, Tq. Mahur, Dist. Nanded on 11th September, 2014, for offences punishable under sections 302, 109, 120-B read with section 34 of the Indian Penal Code (now registered as Sessions Case No.15 of 2015 in Sessions Court, Nanded).

2. The case of the prosecution against the applicants is that they hatched a conspiracy to commit murder of one Nilofar and Shahrukh at the water tank of Renukadevi temple, Mahur.

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3. The role attributed to the present applicants is that they have acted as guards when the offence in question was given effect to.

4. While trying to make out a case for grant of bail, the learned Counsel appearing on behalf of the applicants, in addition to the issue about filing of charge-sheet, would urge that the applicants claim parity with accused Shaikh Javed s/o Shaikh Hussain, who has been released on bail by this Court vide order dated 13th October, 2015, passed in Criminal Application No.4466 of 2015. He would then urge that there is no direct involvement of the applicants in commission of the crime in question, but for their presence at the scene of the offence.

5. Learned Addl. Public Prosecutor strenuously opposed the application on two counts; (I) the vehicle used in commission of the crime has been seized from applicant no.3 Krishna and co-accused Raju Gadekar has stated in his statement that the applicants were present at the scene of the offence and were acting as guards.

6. It is noted that the case is based on circumstantial evidence. The claim of the applicants for grant of bail, in my opinion, is required to be considered favourably on the ground that the statement of the co-accused will not bind the present applicants. Apart therefrom, what is alleged against the applicants is their mere presence at the scene of the offence and no direct participation in the incident. Thus, the learned Counsel appearing on behalf of the applicants was right in claiming parity with

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accused Shaikh Javed s/o Shaikh Hussain, who has been released by this Court vide order dated 13th October, 2015.

7. In view of above, the applicants are entitled to be released on bail. Thus, the following order :-

The applicants be released on bail, in connection with C.R. No.63 of 2014, registered with Mahur police station, Tq. Mahur, Dist. Nanded, for offences punishable under sections 302, 109, 120-B read with section 34 of the Indian Penal Code (now registered as Sessions Case No.15 of 2015 in Sessions Court, Nanded), on each of them furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

Till conclusion of the trial, the applicants shall keep themselves away from the jurisdiction of the concerned police station.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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