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

CRIMINAL APPLICATION NO.6772 OF 2016

Pradeep @ Mithun s/o Nanasaheb
Thombre,
Age : 26 yrs, Occ.Agril.,
R/o Purangaon, Tq. Vaijapur,
Dist. Aurangabad

..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station,
Virgaon, Tq. Vaijapur,
Dist. Aurangabad

..RESPONDENT

Mr R.S. Deshmukh, Advocate for applicant;
Mr S.P. Deshmukh, Addl. Public Prosecutor for respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 19th December, 2016

ORAL ORDER

The applicant, who has been arrested on 3rd September, 2016, in connection with C.R. No.I-48 of 2016, registered at police station Virgaon, Tq. Vaijapur, Dist. Aurangabad, for offences punishable under Sections 307, 379, 353, 341, 143, 147 and 149 of the Indian Penal Code, seeks his release on bail.

2. As per the first information report dated 5th June, 2016, the concerned Police Head Constable of Virgaon police station has reported that on said date, at about 8.30 a.m. while on duty, it was found that a truck, tractor along with trolley filled with sand was passing from Vaijapur

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road. The same was stopped and on making inquiries it was learnt that applicant was the owner thereof. No documents were produced in connection with the sand being carried. Thereafter the applicant came there and threatened the informant. He took the place of the Driver and sought to drive the tractor on the informant. The informant, however, managed to save himself after which the applicant emptied the said tractor and trolley. The informant has stated that this incident occurred in the presence of some villagers. Applicant subsequently came to be arrested on 3rd September, 2016.

3. It is submitted by the learned Counsel for the applicant that statements of various witnesses which were initially recorded on 6th June, 2016 were again recorded on 17th September, 2016. Thereafter statements under Section 164 of the Code of Criminal Procedure have also been recorded and charge-sheet has been filed on 29th November, 2016. Referring to the statements of said witnesses under Section 164 of the Code of Criminal Procedure, it is submitted that these statements indicate that they were not eye-witnesses to the aforesaid incident. They have merely stated what was told to them by the informant. It is, therefore, submitted that though according to the first information report the incident was witnessed by various villagers, there is not a single eye-witness to support the case of the prosecution. It is submitted that considering aforesaid material on record and as investigation has been completed, the applicant deserves to be released on bail.

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4. The application is opposed by learned Addl. Public Prosecutor by relying upon the police papers and the charge-sheet. Reference is made to initial statements of witnesses recorded on 6th June, 2016, which indicate the attempts made on the part of present applicant of endangering the life of the informant. It is submitted that considering the seriousness of the offence, the application deserves to be rejected.

5. I have perused the material placed on record. The initial statements recorded on 6th June, 2016 *prima facie* implicate the applicant herein for offence alleged under Section 307 of the Indian Penal Code. However, the supplementary statements have been recorded on 17th September, 2016, which is almost after three months from the incident. Thereafter, the statements recorded under Section 164 of the Code of Criminal Procedure merely state that the earlier statements had been recorded on the basis of information given by the informant. It can thus be gathered that on the basis of Section 164 statements there were no eye-witnesses and that said persons had merely narrated the incident as told by the informant.

6. Considering the nature of aforesaid material on record and as charge-sheet has been filed after completing the investigation, I find that a case for applicant's release has been made out. Same can be directed subject to imposing conditions.

7. The applicant is directed to be released on bail, pursuant to his arrest in connection with C.R. No. I-48 of 2016, registered at police station

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Virgaon, Tq. Vaijapur, Dist. Aurangabad, for offences punishable under Sections 307, 379, 353, 341, 143, 147 and 149 of the Indian Penal Code, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

- (i) The applicant shall not enter the limits of Virgaon police station till the completion of the trial.
- (ii) He shall attend the Court of learned Sessions Judge on 9th January, 2017 and thereafter as per directions of the learned Sessions Judge.
- (iii) No steps be taken to influence the prosecution witnesses.

8. Observations made in this order are only for deciding the present application. Same is allowed and disposed of.

(A.S. CHANDURKAR, J.)

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