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

CRIMINAL APPLICATION NO. 149 OF 2016

The State of Maharashtra,
Through Gangakhed Police Station,
District Parbhani

..APPLICANT

VERSUS

1. Ganesh Sadashiv Mundhe
2. Chandrakant @ Chandu s/o
Tukaram Margil
3. Dnyanoba @ Dnyanu s/o
Prabhakar Mundhe

..RESPONDENTS

Mr S. J. Salgare, A.P.P. for applicant;
Mr R. N. Dhorde, Senior Advocate i/b Mr V. N.
Shelke and Mr V. R. Dhorde, Advocate for
respondents

WITH

CRIMINAL APPLICATION NO. 6948 OF 2015

Kushabai w/o Dashrath Mundhe,
Age: 65 years, Occu: Household,
R/o Village Margalwadi,
Taluka Gangakhed,
District Parbhani

..APPLICANT

VERSUS

1. The State of Maharashtra
2. Pandit alias Bandu s/o
Baliram Gutte

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3. Suryakant alias Baban s/o
Madhavrao Gutte
4. Siddheshwar alias Siddhu s/o
Shyamrao Gutte
5. Haribhau alias Hari s/o Balaji
Mundhe
6. Vitthal alias Bandu s/o
Baburao Tandale ..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 6366 OF 2015

Kushabai w/o Dashrath Mundhe,
Age: 65 years, Occu: Household,
R/o Village Margalwadi,
Taluka Gangakhed,
District Parbhani ..APPLICANT

VERSUS

1. The State of Maharashtra
2. Ganesh s/o Sadashiv Mundhe
3. Chandrakant alias Chandu
s/o Tukaram Margil
4. Dnyanoba alias Dnyanu s/o
Prabhakar Mundhe ..RESPONDENTS

Mr R. S. Deshmukh, Advocate for applicant;
Mr S. J. Salgare, A.P.P. for respondent/State;
Mr R. N. Dhorde, Senior Advocate i/b Mr V. N.
Shelke and Mr V. R. Dhorde, Advocate for respondent
Nos. 2 to 6 in Criminal Application No. 6948/2015
and for respondent Nos. 2 to 4 in Criminal
Application No. 6366/2015

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CORAM : N.W. SAMBRE, J.**DATE : 3rd August, 2016****ORDER :**

All these applications are for cancellation of bail in Crime No. 215 of 2015 registered with Gangakhed Police Station, District Parbhani, for the offence punishable under Sections 302, 143, 147, 148, 149, 109, 201 of the Indian Penal Code.

2. The prosecution story as appears from the contents of the first information report is that one Ram @ Balu, son of Dashrath and complainant Kushabai, contested the Grampanchayat election against the panel set up by sitting Zilla Parishad member, accused Laxman Mundhe— applicant in Criminal Application No. 3886 of 2016. Out of the said political enmity, Ram was murdered in the intervening night of 26th and 27th July, 2015, which incident was witnessed by complainant Kushabai, mother of deceased Ram, Bhagwat and Dhanraj, cousin brothers of deceased Ram.

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3. Learned Additional Sessions Judge, Gangakhed, while dealing with the case of accused persons, vide order dated 19th November, 2015 has allowed the application and ordered release of the accused persons on the following conditions.

"1. The application is hereby allowed.

2. The applicants be released on their executing P.R. bond of Rs. 25,000/- (Rs. Twenty-five Thousand) each with solvent surety in the like amount.

3. The applicants shall not enter the limits of Gangakhed Taluka till further order, except for attending the Court.

4. The applicants shall furnish the proof of the place where they would reside during the period they are restrained from entering Gangakhed Taluka.

5. The applicants shall not tamper the evidence by inducement or threat."

4. In the above referred background, Mr. Salgare, learned A.P.P. and Mr. Deshmukh, learned

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Counsel for the applicant-complainant, would submit that the order of grant of bail is not sustainable on merits, particularly in view of availability of eye witnesses to the incident. Mr. Deshmukh, learned Counsel would invite my attention to the apprehension expressed by the complainant qua threats received by the complainant and her family members from the relatives of the accused persons. In addition, while rendering assistance from the contents of the charge sheet, the case is sought to be canvassed that there is sufficient material available on record depicting strong *prima facie* case against the respondents-accused persons and as such, prayed for cancellation of bail.

5. Mr. Dhorde, learned Senior Counsel for the respondents-accused would submit that the parameters qua cancellation of bail are required to be kept at the back of the mind while considering the claim of the applicants for cancellation of bail. Apart from above, while taking me through the various instances of the matter, he would urge

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that there is hardly any case, particularly *prima facie* case depicting involvement of the accused persons. He would submit that the applications for cancellation of bail moved under Section 439(2) of the Code of Criminal Procedure are liable to be rejected.

6. While considering rival submissions of the parties, I have perused the order granting bail in favour of the accused persons. Learned Additional Sessions Judge, while dealing with the prayer for grant of regular bail, has taken note of the fact that the investigation in the matter is already over, as the charge sheet is filed. He then considered the time of alleged assault i.e. in the intervening night of 26th and 27th July, 2015. Learned Additional Sessions Judge then considered that having regard to the location of the spot, where the incident took place and visibility of the incident, particularly when the complainant and other eye witnesses were at least 300 meters away from the incident of spot, that too in the dark at

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about 2-30 a.m., have created doubtful story. Apart from above, political rivalry as is specifically mentioned in the first information report between two groups, one of which was headed by deceased Ram and other aspects, particularly as regards delay in lodging the first information report, though the complainant Kushabai and other eye witnesses were aware about the incident being witnessed the same in the night at about 2-30 a.m. were also considered by the learned Additional Sessions Court.

7. So far as the case as is sought to be put forth by the prosecution and learned Counsel for the complainant for cancellation of bail, in the above referred background, particularly on the merits of the matter, in my opinion, does not call for re-appreciation, as the reasons which are furnished by learned Additional Sessions Judge while ordering release of the respondents-accused persons are very much available and could be read out from the contents of the charge sheet.

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8. So far as apprehension of the complainant as regards threats from the relatives of the accused is concerned, same is also duly addressed by learned Additional Sessions Judge.

9. In view of above, in my opinion, no case for cancellation of bail, is made out. As such, criminal applications fail, same stand rejected.

(N.W. SAMBRE, J.)

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