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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL BAIL APPLICATION NO.1345 OF 2015
(THROUGH POST)***

Umesh Damaji Gangan	...Applicant
V/s.	
The State of Maharashtra	...Respondent

Mr.Kamran Shaikh, *Amicus Curiae*, for the Applicant.

Ms.A.A.Mane, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

***DATED : 15th JANUARY, 2016.
(IN CHAMBERS)***

P.C. :

1. Heard learned counsel for the Applicant and the learned APP for the Respondent - State.

2. This is an application seeking bail, filed by the applicant through Jail. As the first application for bail, being Criminal Bail Application No.85 of 2015 was heard and disposed of as withdrawn before me, this application has been placed before me. Learned Counsel Mr.Kamran Shaikh, was appointed as *Amicus Curiae* to espouse the cause

of the Applicant in the said matter.

3. Learned Counsel for the applicant submitted that although the applicant has been arrested in connection with C.R.48 of 2014, registered with the Wada Police Station, for the alleged offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code, no offence is disclosed as against the applicant. He submitted that the statements of the witnesses are contrary to one another and even the last seen theory appears to be doubtful. He further submitted that there is no recovery of any incriminating material at the instance of the applicant under Section 27. He states that a vehicle allegedly belonging to the applicant, which was used in the commission of the offence has been seized by the police in the aforesaid C.R. He further submits that the applicant had obtained a document under the Right to Information Act, which shows that on the day of the alleged offence and one day prior and subsequent thereto, the applicant, being a Government Servant was at work. He submitted that in view of the said document, the *plea of alibi* be considered. He has tendered the said document dated 3rd August, 2015 in support of his *plea of alibi*. He also fairly states that the trial has commenced and till date more

than two witnesses have been examined in the said case. He submitted that although more than two witnesses have been examined, the applicant be enlarged on bail considering the peculiar facts of the case and the document tendered in support thereof.

4. Learned APP opposed the bail application. She submitted that the trial has commenced and it appears that more than two witnesses have been examined and as such the plea for bail ought not to be considered. She further submitted that the *plea of alibi* raised by the applicant, is a matter of trial and that the applicant can produce the said document before the Trial Court in support of his *plea of alibi* or if necessary can also examine any officer as a defence witness.

5. Perused the papers. The applicant can produce the said document tendered by the learned counsel for the applicant before the Trial Court, and the applicant can also lead evidence in support thereof. Since the trial has already commenced and more than two witnesses have been examined in the said case, the prayer for bail is rejected.

6. Accordingly, the Application for bail is rejected and disposed of as such.
7. Needless to observe that the trial court shall decide the case on its own merits uninfluenced by the observations made in this order.
8. Mr.Kamran Shaikh, has taken strenuous efforts and has ably argued the said application. The High Court Legal Services Committee to pay a sum of Rs.3,500/- to Mr.Kamran Shaikh, by way of legal fees.
9. A copy of the said order also be forwarded to the applicant, who is lodged in Thane Central Prison.
10. Parties to act upon the authenticated copy of this order.

(REVATI MOHITE DERE,J.)