

(1)

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

CRIMINAL APPLICATION NO. 132 OF 2017

1. Gulab s/o Dada Thorat,
Age: 60 years, Occu: Agriculture,
R/o. Puntamba, Tq. : Rahata,
Dist. Ahmednagar
 2. Jagannath s/o Gulab Thorat,
Age: 35 years, Occu: Agriculture,
R/o. Puntamba, Tq. : Rahata,
Dist. Ahmednagar
- ..APPLICANTS

VERSUS

The State of Maharashtra,
Through its Police Inspector,
Virgaon Police Station,
Dist. Aurangabad

..RESPONDENT

Mr A.M. Nagarkar, Advocate holding for Mr K. M. Nagarkar, Advocate for applicants;
Mr V. S. Badakh, Addl. Public Prosecutor for respondent

CORAM : N. W. SAMBRE, J.

DATE : 19th January, 2017

ORAL ORDER

Heard.

2. By the present application under Section 438 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.I-88 of 2016, registered with Virgaon police station, for an offence punishable under Section 379 read with Section 34 of the Indian Penal Code.

(2)

3. Learned Counsel appearing on behalf of the applicant submits that apart from delay of about twelve days in lodging the first information report, the fact remains that the complainant – Police Patil claims to be an eye-witness when the applicants were removing sand. However, the first information report does not depict that in the capacity of a public servant she had resisted the act of applicants.

4. While opposing the application, learned Addl. Public Prosecutor submits that the complainant is an eye-witness to the incident.

5. From the record I hardly see any material to infer that sand stock in question was seized by the Tahsildar by drawing appropriate panchnama, as there is no such seizure panchnama on record. What is found from the record is, giving of such stock in the custody of the complainant – Police Patil.

6. Apart from above, the complainant claims that sand stock was removed in her presence, however, there is no resistance shown by the complainant in the capacity of the public servant *qua* such act of the applicants.

7. In view of above, in my opinion, a suspicion is created *qua* involvement of the applicants in the crime in question. In view thereof, the application deserves to be allowed. Hence, following order :-

(3)

In the event of arrest of the applicants, in connection with C.R. No.I-88 of 2016, registered with Virgaon police station, for an offence punishable under Section 379 read with Section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one or two sureties for the like amount.

The applicants shall attend the Investigating Officer on 22nd and 23rd January, 2017, between 10.00 a.m. and 12 noon and thereafter as and when called.

The applicants shall not take any steps to influence the prosecution witnesses or tamper with evidence.

Criminal Application stands allowed in above terms.

(N. W. SAMBRE, J.)

amj