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

CRIMINAL APPLICATION NO. 137 OF 2017

1. Nilesh s/o Gangadhar Avhad,
Age: 35 years, Occu: Agriculture,
R/o. Village Korta, Taluka-Basmat,
District-Hingoli
 2. Nitesh s/o Gangadhar Avhad,
Age: 30 years, Occu: Agriculture,
R/o. As above
 3. Brijesh s/o Chandji Avhad,
Age: 28 years, Occu: Agriculture,
R/o. As above
 4. Kalyan Namdeo Avhad,
Age: 42 years, Occu: Agriculture,
R/o. As above
 5. Chandji Vitthalrao Avhad,
Age: 40 years, Occu: Agriculture,
R/o. As above
 6. Munjaji Shankar Borkar,
Age: 50 years, Occu: Agriculture,
R/o. As above
 7. Dattarao Mugaji Avhad,
Age: 42 years, Occu: Agriculture,
R/o. As above
 8. Hanuman Umaji Avhad,
Age: 22 years, Occu: Agriculture,
R/o. At Post- Shendursana,
Taluka-Aundha, Dist. Hingoli
- ..APPLICANTS

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Kurunda, Police Station,
Kurunda, District-Hingoli

..RESPONDENT

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Mr S.S. Rathi, Advocate for applicants;
Mr V. S. Badakh, Addl. Public Prosecutor for respondent
Mrs R. D. Reddy, Advocate to assist Addl. Public Prosecutor

CORAM : N. W. SAMBRE, J.

DATE : 27th January, 2017

ORAL ORDER

By the present application under Section 438 of the Code of Criminal, the applicants, who are close relatives of main accused Amol Avhad, seek their release on bail, in connection with C.R. No.84 of 2016, registered with Kurunda police station, Kurunda, District Hingoli, for offences punishable under Sections 366, 376, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that Amol promised to the complainant Saraswati, who is a divorcee, to marry her and maintained physical relationship since 2014. However, his refusal to marry her, resulted into registration of the crime in question.

3. The applicants seek pre-arrest bail on the ground that prior to the complaint in question, which is lodged on 1st December, 2016, there was another complaint lodged on 30th May, 2016, alleging that Amol had taken hand loan of Rs.3,00,000/- from the complainant, which was not refunded by him. Such complaint had resulted into registration of a non-cognizable offence. So far as the first complaint is concerned, there is no reference therein about the alleged relationship between the complainant and

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accused Amol. It is only after lapse of period of six months, present complaint came to be lodged alleging physical relationship.

4. In the above background, pre-arrest bail is sought by the applicants, contending that this is a case of their false implication in the crime in question.

5. Learned Addl. Public Prosecutor, who is assisted by the learned Counsel appearing on behalf of the complainant, would urge that the offence is serious one and custodial interrogation of the applicants is necessary. It is also claimed that the applicants are specifically named in the first information report, with attribution of a specific role and as the investigation is not yet completed and is at an advanced stage, the application be rejected.

6. Apart from above, learned Counsel appearing on behalf of the complainant submits that the first complaint dated 30th May, 2016 will have hardly any bearing over the present complaint, in which pre-arrest bail is sought, as both are based on different incidents.

7. Having considered the submissions, it is to be noted that the complainant had initially lodged complaint on 30th May, 2016, in which the alleged relationship between the complainant and main accused Amol is conspicuously absent and it could be noticed that the differences as alleged between her and applicants, as arrived in May, 2016 itself, is the

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transaction *qua* the amount to be paid was not honoured. It was expected of the complainant to narrate about alleged relationship between her and Amol, however, the same does not find place in the said complaint.

8. It is then to be noted that the incident in question is claimed to have commenced in 2014 and it is only in 2016, the complaint came to be lodged alleging an offence punishable under Section 376 of the Indian Penal Code. The inference that could be drawn from the record is that of consent.

9. Apart from above, the allegations against the applicants, who are seeking pre-arrest bail, are in the nature of only attributions, which do not call for any custodial interrogation.

10. For the reasons stated herein above, in my opinion, it will be appropriate to order release of the applicants on pre-arrest bail. Hence, following order :-

In the event of applicants, in connection with C.R. No.84 of 2016, registered with Kurunda police station, Kurunda, District Hingoli, for offences punishable under Sections 366, 376, 323, 504, 506 read with Section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.20,000/- with one or two sureties for the like amount.

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The applicants shall attend the Investigating Officer on 4th and 5th February, 2017, between 12 noon and 2.00 p.m. and thereafter as and when called.

Criminal Application stands allowed in above terms.

(N. W. SAMBRE, J.)

amj