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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.938 OF 2015
IN
CRIMINAL APPEAL NO.468 OF 2015**

Rizwana Yusuf Qureshi ... Applicant.
V/s.
The State of Maharashtra Respondent

Mr. Ansari Mujahid Shakeel, Advocate, for the Applicants.
Mrs. A.S. Pai, A.P.P., for the Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 11TH AUGUST, 2015.

P.C. :

1. Heard both sides.
2. The applicant has been convicted under Sections 302, 504 and 506 read with Section 34 of Indian Penal Code. The applicant is now seeking bail.
3. There are three eye witnesses in the present case viz. P.W.1 Zaid, P.W.2 Anam and P.W.3 Firoz Khan.
4. P.W.1 Zaid has stated that on 8.12.2012 at about 7.45 p.m., they went to play cricket. Their ball went in the house of accused No.1 Yusuf. Thereupon the accused No.2 Rizwana

(applicant), who is wife of accused No.1 Yusuf, came out and started abusing them. P.W.1 Zaid came back to his house and informed this fact to his mother and sister Anam. At about 11.00 p.m. his sister P.W. 2 Anam and he went to the house of accused No.2 Rizwana and P.W.2 Anam asked Rizwana why she had abused Zaid. However, accused No.2 Rizwana started abusing P.W.2 Anam. On hearing noise, accused No.1 Yusuf came to the spot. He also started abusing Anam. That time P.W.3 Firoz and others came to the spot. Accused No.1 Yusuf and accused No.2 Rizwana continued abusing. Meanwhile Imran (deceased) came there. He also advised accused No.1 Yusuf and accused No.2 Rizwana not to quarrel. Accused Rizwana started beating Anam and gave abuses to her. Imran then went to separate the quarrel, at that time scuffle took place between Imran and Yusuf. Thereafter Yusuf gave call from his Cell Phone to accused No.3 Sonu and asked him to rush to the spot. Accused No.3 Sonu and accused No.4 Tanvir came to the spot. Accused No.3 was armed with sword like weapon. Accused No.4 Tanwir lifted a bat and gave blow on the back of Imran. Accused No.1 Yusuf caught Imran from behind. Accused No.3 then gave blow of sword like

weapon in the stomach of Imran.

5. Learned Advocate for the applicant pointed out that as far as assault on deceased Imran is concerned, no role is attributed to the applicant. In fact after accused No.1 Yusuf called accused No.3 Sonu from his Cell Phone, Rizwana has not participated in the incident at all. He submitted that as far as fatal assault on Imran is concerned, Rizwana did not share any common intention nor she caused any injury to Imran. Looking to the evidence of the three eye witnesses as far as the applicant is concerned, we prima facie find much merit in the submission that the applicant did not share any common intention with the other accused to cause death of Imran. Moreover, applicant was on bail during the trial. Looking to all these facts, we are inclined to grant bail to the applicant. Hence following order.

Order

- I. The applicant be released on bail in the sum of Rs.50,000/- with one or two sureties to make up the said amount.
- II. Application is allowed in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. .V. K. TAHILARAMANI, J.]