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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1289 OF 2015
IN
CRIMINAL APPEAL NO.977 OF 2015

Nitin @ Ganpat Shivaji Koli	.	..Applicant
Vs.		
The State of Maharashtra		..Respondent

Mr. Satyavrat Joshi, for Applicant.
Ms. R.M. Gadhvi, APP for State.

**CORAM: SMT. V.K. TAHILRAMANI, Acting C.J. &
A.S. GADKARI, J.**

15th October 2015.

P.C.:

Heard learned Counsel for the applicant and the
learned APP for the State.

2 The applicant has been convicted under Section 302 of
IPC for causing the death of Vijay Nikam by firing on him with a
fire arm. The accused is now seeking bail.

3 It is the prosecution case that the deceased Vijay came
to the house of the applicant at 2.30 a.m. in the night between

17.2.2008 and 18.2.2008. The deceased was armed with pistol/revolver. Thereafter the applicant fired at Vijay which led to death of Vijay. The learned Counsel for the applicant submitted that this incident occurred when the applicant was exercising his right of private defence and hence the offence would not fall under Section 302 of IPC, but would fall at the most under Section 304-I. In support of his contention, he has placed reliance on the evidence of PW-1 Ajay who was the brother of deceased. Ajay has stated that on 17.2.2008, there was an altercation between the applicant and deceased Vijay. His brother Vijay returned back to house and told him (Ajay) that the applicant assaulted him with hand. Ajay has further submitted that at 2.30 a.m., Ajay went to the house of Aashish Jadhav. Then Vijay went to the house of the applicant alongwith Aashish Jadhav. Vijay knocked on the door of the applicant. Thereupon the applicant came out of the house. Then Ajay heard the sound of firing and he saw his brother was lying on the ground. At that time Ajay was standing about 8 to 10 feet away from the spot. Ajay saw that the applicant was holding revolver in his hand from which smoke was emitting.

4 Mr. Joshi, the learned Counsel for the applicant drew our attention to the cross-examination of Ajay wherein he has admitted that at the time of incident his brother Vijay was carrying a revolver with him and his brother Vijay was intending to kill accused Nitin Koli. From the above facts, we find much merit in the submission of learned Counsel for the applicant that the incident occurred while exercising the right of private defence. It may also be noted that the applicant has fired only one shot at Vijay and prima facie this act as seen from the facts above shows that the incident occurred while exercising right of private defence.

5 In addition to the above fact, it is an admitted fact that the applicant was on bail pending trial and it is not the case of the prosecution that the applicant misused the grant of bail in any manner. In view of all these facts, we are inclined to grant bail.

6 Hence, the following order:

The applicant be released on bail in the sum of Rs.25,000/- with one surety in the like amount. During the

period that the applicant is on bail, he shall report to Warjemaalwadi Police Station, Pune City once in two months i.e. on first Monday of every alternate month.

7 The Application is allowed in the above terms.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)

