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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2627 OF 2014

Satyaprakash Vaidya

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Abdulkarim Nawabkhan Pathan, for the Applicant.

Ms.Rutuja Ambekar, APP for the State.

API Mr.R.PNale, Versova Police Station.

CORAM : REVATI MOHITE DERE, J.

DATED : 17th FEBRUARY, 2015.

P.C.

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

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.326 of 2014 registered with the Versova Police Station, Andheri, Mumbai, for the alleged offences punishable under Sections 302, 325, 337 r/w 34 of the Indian Penal Code.

3. The facts of this case are peculiar. Learned Counsel for the applicant submitted that on 28th October, 2014 at about 4.00 pm., when the deceased i.e. Gotiram Shivekar was passing from Saat Bungalow area, Versova, one unknown person dashed him and hence he started chasing the said unknown person by pelting stones towards him. When the deceased came near Avinash Tower, the watchmen of the said tower i.e. Sheetal Kamat tried to pacify him, however the deceased started quarreling with the watchmen – Sheetal Kamat and heckled him. According to the learned counsel for the applicant the deceased assaulted the watchman, and on seeing this, the present applicant who was working as a sweeper in the said tower came to his rescue. Both the sides assaulted each other. Thereafter, the police came to the spot and took the deceased with them. A complaint was lodged by Sheetal Kamat with the Versova police station, as against the deceased - Gotiram Shivekar, which was registered vide C.R. No.325 of 2014, alleging offences punishable under Section 323, 324, 504 of Indian Penal Code. Thereafter the deceased was taken into custody by the Versova Police Station. As the deceased complained of stomach pain whilst in custody, he was taken to Cooper Hospital on 28th October, 2014. Thereafter on 29th October, 2014, again as the deceased complained of stomach pain, he was taken to the

hospital, however, he was declared dead before reaching the Cooper Hospital. Prior to taking the deceased - Gotiram Shivekar, to the hospital it appears that the Versova police had recorded his statement on 29th October, 2014, wherein, he had made allegations of assault against the complainant – Sheetal Kamat who had got him arrested. Pursuant to Gotiram Shivekar's complaint, an FIR was registered, vide C.R.No.326 of 2014, with the Versova Police Station, alleging offenses punishable under Sections 325, 337 r/w 34 of the Indian Penal Code as against Sheetal Kamat and the applicant. As the deceased – complainant expired, the Versova Police Station added Section 302 of the Indian Penal Code, to C.R.No.326 of 2014.

4. Learned Counsel for the applicant took me through the injury certificates of Sheetal Kamat, the applicant as well as the medical certificates of the deceased – Gotiram Shivekar. According to him, no offence under section 302 of the Indian Penal Code was made out as against the present applicant, considering the fact, that it was a case of sudden fight, no intention could be attributed to the applicant. He submitted that the incident took place on 28th October, 2014 at around 4.00 to 4.30 p.m. after which the deceased was taken into custody by the

Versova Police and it was on the next day that the deceased had expired. He stated that the police had wrongly invoked Section 302 as against the applicant and the co-accused. He relied on the statement of one Varun Singh, in support of his contention to show that it was the deceased who had assaulted the applicant and Sheetal Kamat, as a result of which the applicant and the watchman – Sheetal Kamat, sustained injuries and even the deceased sustained injuries, in the said sudden fight. He took me through the inquest panchanama which records, that there was no injury on the head and neck of the deceased and that the same was contrary to the statement of the deceased that he had received injury on the head. He submitted that something happening to the deceased in the police station, whilst in custody cannot be ruled out.

5. Learned APP opposed the bail application. In the facts of the present case, it is apparent that there was no motive for the applicant to kill the deceased. It appears to be a case of sudden fight. Considering the facts of the present case, prima- facie, it appears that the offence would not be one under Section 302 but would constitute a lesser offence.

6. Considering the aforesaid, the applicant deserves to be granted

bail on the following terms and conditions :

ORDER

- i) The Applicant be enlarged on bail on furnishing PR. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount ;
 - ii) The Applicant shall not tamper or attempt to influence any person concerned with the case ;
 - iii) The Applicant undertakes to furnish his residential address, where he intends to stay, to the Trial Court as well as the Versova Police Station, and if there is any change in the residential address of the Applicant, he shall keep the Trial Court as well as the Police Station informed about the same ;
 - iv) The Applicant shall co-operate in the conduct of the trial ;
 - v) The formalities of accepting the sureties is expedited.
7. The Application is allowed and disposed of in above terms.
8. Parties to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J.)