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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 135 OF 2016
IN
CRIMINAL APPEAL NO. 230 OF 2015

Bhausahab Pandurang Garad ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. Jaydeep D. Mane for the applicant.

Mrs. U.V. Kejriwal, APP for the respondent/State.

**CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

JUNE 23 , 2016.

ORAL ORDER: (Per Mrs. Mridula Bhatkar, J.)

This Bail Application is preferred by the applicant/accused, who is convicted by the judgment and order dated 20th January, 2015 for the offences punishable under section 302 r/w. 149 of the Indian Penal Code and is sentenced to suffer life imprisonment and so also under other offences. The incident has taken place on 19th July, 2012.

2. The learned senior counsel Mr. Mundargi appearing for the applicant/accused has made out two points for granting bail to the

applicant/accused. He submitted that the applicant was on bail by an order dated 24th June, 2013 of this Court in Criminal Application No. 877 of 2013. Secondly, he relied on two letters, i.e., one sent by the Investigating officer to the Medical Officer on 19th July, 2012 for conducting postmortem on the body of Samadhan and other is the note by P.S.I. to the Medical officer (Rural) Mohol alongwith the dead body sent for postmortem. The learned senior counsel submitted that in this note which was sent immediately along with the body of the deceased Dhanyakumar alias Samadhan, the police officer has mentioned that when the deceased was returning home on 19th July, 2012 at around 12 to 12.15 noon, Vithal Khandare, Hanmant Khandare and other 6 persons armed with sword, sattur and knife assaulted the deceased and he succumbed to injuries. The learned senior counsel submitted that the names of these two persons are neither appearing in the FIR nor they were made accused. However, as this note was immediately sent by the police officer and there is no explanation to that effect as to why the names of these two persons are appearing and forwarded to the Medical Officer, the case of the prosecution against involving the applicant/accused Bhausahab Garad and others becomes doubtful. He submitted that considering these two aspects, the

applicant/accused is to be released on bail.

3. Learned APP while opposing this Bail Application, relied on the evidence to two eye witnesses, i.e., PW-3 Subhash Ubale, brother of deceased and PW-6 Prabhodhan Sathe, who had witnessed this incident. Learned APP further submitted that the prosecution has also examined PW-5 Neelkanth Kundalik Khandare on the point of motive. There was fight between Hanmant and the accused persons and the deceased was witness for prosecution in that case which was registered in 2010 and the matter between Hanmant and present applicant/accused was not settled due to applicant/accused in the meeting which was held prior to the incident.

4. We have perused the evidence of the eye witnesses, the letters sent by the I.O. which are pointed out by the defence and so also earlier orders of the learned Single Judge of this Court releasing the accused on bail pending trial. Those orders were passed when the evidence was not recorded. The evidence of the eye witnesses is before us. At this stage, we do not give importance to the information given by the police officer to the medical officer along with note for conducting postmortem on the body of

the deceased. We have considered the evidence of the eye witnesses who have attributed specific role. Our attention was drawn to the First Information Report which was registered at 13.15 hours on the same day, i.e., 19th July, 2012 and that is within an hour after the incident wherein names of the accused are mentioned as assailants and not of Vithal Khandare and Hanmant Khandare. Considering this scenario, we are of the view that this is not a fit case to grant bail to the applicant/accused.

5. Application for bail is rejected.

(MRS. MRIDULA BHATKAR,J.)

(MRS. V.K. TAHILRAMANI, J.)