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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO. 616 OF 2016
WITH
APPP NO. 305 OF 2016**

Salman Kalam Khan

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. Hrishikesh Mundargi i/b Subir Sarkar for Applicant.

Ms. J.S. Lohakare, APP for State.

Mr. Umar Kazi for Intervener in APPP-305/2016.

CORAM: A.S. GADKARI, J.

DATE : 17th October 2016.

P.C.

1 This is an application under Section 439 of Cr. P.C. for bail in CR No.I-225 of 2015 dated 21.7.2015 registered with Shivaji Nagar Police Station, Ambernath (E), District-Thane under Sections 302, 342, 120(B) of the Indian Penal Code and under Section 4 and 25 of the Indian Arms Act and under Section 37(1), 135 of Maharashtra Police Act.

2 Heard the learned counsel for the applicant, the learned APP and also perused the entire chargesheet annexed to the application.

3 The first information report is lodged by Shri Parshuram Patil, the father of the deceased Akalesh Patil. The date and time of the incident is 21.7.2015 at about 12.45 p.m. It is stated in the said report that, the informant was informed by one Mukesh Maurya that Akalesh Patil was assaulted by two unknown persons with a chopper. The deceased Akalesh sustained injuries on his chest, neck and head and was immediately shifted to Central Hospital, Ulhasnagar when he was declared dead before admission. In the premise the first information report is lodged against unknown persons for unknown reasons. After lodgment of the first information report, the police have investigated the crime. During the investigation, the applicant came to be arrested on 29.7.2015. After completion of investigation police have submitted chargesheet.

4 The record reveals that the first information report is lodged on 21.7.2015 by the father of the deceased on the basis of information provided by the witness Mukesh Maurya. That the applicant came to be arrested on 29.7.2015 by the police. That the statement of the eye-witness Mukesh Maurya is recorded on 30.7.2015 i.e. after the arrest of the applicant and after a period of about 9 days from the date of incident. In his statement the said witness Mukesh Maurya has for the first time disclosed the name of the applicant as the other assailant with principal accused

Sagar Patil. The record reveals that the test identification parade to establish the identity of the applicant is not conducted by the Investigating Agency till date. There is recovery of two choppers at the instance of accused No.1-Sagar Patil. The applicant is the friend of said Sagar Patil. The record further reveals that the Investigating Agency has recorded the statements of two witness namely Arman Khan and Parvez Rafiq Khan who have stated about the alleged extra judicial confession given by the applicant on 27.7.2015 i.e. after about six days from the date of incident. It appears that the statements of these two witnesses are also recorded under Section 164 of Cr. P.C. by the 6th JMFC, Ulhasnagar on 17.8.2015. It further appears that the said statements have been subsequently retracted by the said witnesses by filing affidavits dated 16.11.2015. Prima facie it appears that apart from the alleged extra judicial confession given by the applicant before the said two witnesses on 27.7.2015 i.e. after a gap of about six days from the date of commission of offence, there is no other evidence against the applicant in the present crime. The record further reveals that there are no antecedents to the discredit of the applicant.

5 In view of the above the applicant has made out a case for his release on bail.

Hence, the following Order:

- (i) The applicant be released on bail in CR No.I-225 of 2015 registered with Shivaji Nagar Police Station, Ambernath (E), District-Thane on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (ii) After his release from the jail, the applicant shall attend the Shivaji Nagar Police Station, Ambernath on every first Monday of the month between 11.00 a.m. to 1.00 p.m.
- (iii) The applicant shall also attend all the dates before the Trial Court.
- (iv) Any two consecutive defaults in complying with the aforesaid conditions, will attract the provisions of cancellation of bail.
- (v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

6 The Application is allowed in the aforesaid terms.

7 In view of the aforesaid Order in the Bail Application, Criminal Application No. 305 of 2016 does not survive and the same is accordingly disposed off.

(A.S. GADKARI,J.)