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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.710 OF 2016

Gajanan Pralhad Kakade ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Z.M. Avhad for the applicant.

Mr.Arfa Sait, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 13TH JUNE, 2016

P.C. :-

1. The applicant / accused in Crime No.149/2015 for offences punishable under section 302, 326, 325, 323, 504 and 506 of the Indian Penal Code and under section 4(25) of the Arms Act and section 135 of the Maharashtra Police Act by this application is praying for releasing him on bail.

2. Heard the learned counsel appearing for the applicant / accused. By drawing my attention to the post mortem report, the learned counsel for the applicant / accused argued that death was caused because of piercing of

bone in the heart. The role attributed to the present applicant is assault by means of sword to fingers of the victim. Therefore, according to the learned counsel for the applicant, offence punishable under section 302 of the Indian Penal Code is not made out against the applicant and, therefore, he is entitled for bail.

3. I have heard the learned APP.

4. Post mortem report shows that Salim Ibrahim Shaikh died because of haemorrhagic shock due to blunt trauma to chest. Column No.17 of the post mortem report shows that deceased Salim had suffered multiple incised wound to his middle index finger of the left hand.

5. According to the prosecution case as reflected from the charge-sheet, on 8th May, 2015 the present applicant with co-accused demanded subscription from deceased Salim and his brother Amjad for orchestra. On refusal to pay the same, the applicant and co-accused threatened them with dire consequences. Charge-sheet shows that on 9th May, 2015 the applicant as well as other accused persons in furtherance of

their common intention raided the house of the deceased Salim. The present applicant had given blows of sword to deceased Salim. Apart from deceased Salim, his brother / informant Amjad, his mother Aktarbi, Shabnam widow of Salim, Ruksar wife of the informant Amjad, Shaheen sister of deceased also suffered severe injuries. Salman Bilal Shaikh is also witness to the incident in question, apart from the injured witnesses and the informant. The weapon of offence was found lying and it was seized at the time of recording the spot panchanama. Deceased Salim had made oral dying declaration which was heard by police constables Sunil and Nilesh and another. The prosecution has collected injury certificates of other victims which prima facie shows their presence at the scene of occurrence. It does make it prima facie clear that in furtherance of their common intention the applicant and other co-accused had murdered the deceased. As such, at this stage, the role of the applicant cannot be segregated to show that he is not involved in the offence punishable with life imprisonment or death. No case for bail is made out. The application is rejected.

(A.M.BADAR, J.)